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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 93-253

To: The Commission

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COMMENTS OF PAGING NETWORK, INC.

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Summary

PageNet applauds the Commission for charting a sound course with respect to the spectrum allocated four years ago for narrowband PCS. PageNet is seriously concerned, however, that several of the proposals contained in the *Further Notice*, if adopted, would represent a sharp, unwise departure from that course to the detriment of the public and the messaging industry.

First, the Commission should retain the one MHz spectrum reserve to allow the FCC to respond to growth and development of specific narrowband PCS services as well as potential new future services. More than one-half of the initial two MHz (of the two MHz allocated to narrowband PCS) that were channelized in 1994 have yet to be assigned. Making the reserve spectrum available at this time would not serve the public interest. Release of this spectrum is not necessary to facilitate competition; open the market to new entrants; or allow existing narrowband PCS licenses to expand their systems through access to additional spectrum.

There are already many well financed paging companies who hold narrowband PCS licenses, and there will be even more when the Commission auctions the remaining portion of the two MHz it initially channelized. Moreover, the narrowband PCS services compete with existing paging services, whether offered over traditional paging channels, SMR channels, or cellular or PCS channels. Further, the paging/narrowband PCS market is already open to new entrants thanks to existing flexible use policies and the substantial amount of spectrum already licensed. Finally, at this early stage where initial narrowband PCS systems are just

being rolled out and less than one-half of the initial two MHz has been licensed, it is much too early to predict when the reserve spectrum will be needed by the licensees in the initial two MHz in order to expand their systems. Any projections of growth and future development so as to justify the release of the spectrum at this time would constitute pure speculation.

Rather than advance the FCC's goals, release of the reserve spectrum will have a clear negative anti-competitive impact. As the Commission knows, the monies paid for licenses at auction must be recovered by the licensees through service revenues. If the reserve is released at this time, auction winners are likely to pay a substantially lower price for their frequencies than those participating in the initial auctions, giving the newcomers an obvious competitive advantage.

Further, there is no adequate justification for a departure from the Commission's well-founded conclusion in 1993 that one MHz should be held in reserve until narrowband PCS services have an opportunity to develop. In the short time since licenses were granted, the narrowband PCS services certainly have not developed in any material sense -- systems are just now being rolled out. It is well established that, under the Administrative Procedures Act, an agency may not adopt a sudden, unsubstantiated change in its course. Rather, "an agency changing its course must supply a reasoned analysis" supported by the record. *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Automobile Ins. Co.* The proposal to release the narrowband PCS reserve would constitute just such an unsubstantiated, and unlawful, change in course.

Second, PageNet urges the Commission to continue to rely on its existing population and geographic coverage criteria and to disavow its proposal to use "substantial service" as a measure of performance for narrowband PCS. Adoption of the test will encourage speculators to hold spectrum until the market is willing to pay them value in substantial excess of what they paid at auction. Speculators will be able to take frequencies out of circulation for extended periods to meet their own economic goals, while depriving the public of the benefit of service over those frequencies for no public interest purpose.

Third, PageNet supports the Commission's conclusion to eliminate BTA licenses. Conversely, PageNet does not support the Commission's proposal to artificially create geographic areas larger than MTAs for the remaining channels. Because MTA or wide-area local coverage is still the foundation of paging service, it is appropriate to license the remaining allocation on a MTA basis. Allowing entities to aggregate MTAs (for larger-than-MTA service areas) preserves all carriers' options to pursue their specific business plans, without creating artificial incentives for carriers to bid for regional licenses. Response channels, too, should be licensed on an MTA basis.

Fourth, PageNet submits that narrowband PCS and paging licensees should have sufficient flexibility to use portions of their spectrum for purposes of mobile unit registration to support dramatically more efficient use of spectrum. A system that is able to utilize mobile spectrum using registration can serve several times the number of subscribers that non-registration systems serve.

Fifth, the Commission has concluded in earlier decisions that eligibility for the 12.5 kHz response channels should be limited to traditional paging carriers for use with 929 and 931 MHz systems, with maximum peak output power. PageNet reserves comment on the appropriateness of modifications to the peak output power until such time as it can further study the issue in conjunction with the PCIA Technical Committee's efforts, in which PageNet will participate.

Sixth, PageNet urges the Commission to modify its narrowband PCS auction rules to assure that the rules do not encourage speculators, that they allow bidders access to all relevant information, including applicant identity, and that the rules provide for bidding credits and installment payments only where there is a clear statutory basis for them.

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COMMENTS OF PAGING NETWORK, INC.

Paging Network, Inc. ("PageNet"), by its attorneys and pursuant to 47 C.F.R. §§ 1.415 and 1.419, hereby comments upon the Federal Communications Commission's ("FCC" or "Commission") *Further Notice* in the above-captioned dockets.[1/]

Statement of Interest

PageNet is the nation's largest provider of paging services, bringing messaging to over nine-and-one-half million units. PageNet holds traditional common carrier paging licenses in the 929-931 MHz band as well as several narrowband personal communications services ("narrowband PCS") licenses obtained through the Commission's first ever spectrum auctions. The proposals in the *Further Notice*, if adopted, would substantially transform the regulatory and business landscape in which PageNet bid for its narrowband licenses and is constructing and operating

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1/ *Further Notice of Proposed Rulemaking*, GEN Docket No. 90-314, ET Docket No. 92-100 and PP Docket No. 93-253, released on April 23, 1997 (hereinafter "*Further Notice*").

its PCS and paging systems. Accordingly, PageNet has a clear interest in the outcome of this proceeding.

Introduction

PageNet believes that, on the whole, the Commission and the industry have charted a sound course with respect to the spectrum allocated four years ago for narrowband PCS. However, PageNet is seriously concerned that several of the proposals contained in the *Further Notice* signal a sharp, unwise departure from the course set. Principal among these is the tentative plan to release the one MHz of spectrum that was reserved in 1993 to allow the Commission to "respond to growth and development of specific narrowband PCS services as well as potential new future services."[2/] Other proposals in the *Further Notice* that would diverge from the recently established narrowband PCS framework to the detriment of the public and the messaging industry are suggestions to eliminate construction requirements and to reconfigure the remaining MTA and BTA licenses available into nationwide or regional licenses. As set forth below, PageNet urges the Commission to decline to adopt most of the proposals contained in the *Further Notice*, either because they are unwise from a public policy perspective, or because they are unlawful. Instead, the Commission should stay the course it has set for narrowband PCS, with few modest exceptions. The Commission should retain its vision underlying the *Narrowband PCS Allocation*

2/ Amendment of the Commission's Rules to Establish New Narrowband Personal Communications Services, *First Report and Order*, 8 FCC Rcd 7162, 7165 (1993) ("*Narrowband PCS Allocation Order*")., *recon.* 9 FCC Rcd 1309 (1994) ("*Narrowband PCS Reconsideration Order*")

Order and give narrowband PCS the opportunity to grow and develop as contemplated in that decision.

I. The Commission Should Continue To Hold One MHz Of Narrowband PCS Spectrum In Reserve

A. Releasing The Reserve Spectrum Would Not Further The Commission's Stated Objectives Sufficiently To Justify Abandoning The Benefits Of Holding One MHz In Reserve

In 1993, the Commission allocated three MHz of spectrum for narrowband PCS. Rather than immediately assign all of this spectrum, the Commission determined in the *Narrowband PCS Allocation Order* that the public interest required that only two MHz of this spectrum be channelized and licensed to support the narrowband PCS proposals before it.[3/] The remaining one MHz was placed into reserve to allow the FCC "to respond to growth and development of specific narrowband PCS services as well as potential new future services."[4/] The Commission correctly concluded that this approach would not only accommodate the initiation of narrowband PCS, but would give the agency flexibility in the future to channelize and license the reserve spectrum as narrowband PCS develops.

By selecting this forward-looking course, the Commission ensured that it would be able to fulfill its statutory mission as spectrum manager.[5/] The Commission's sound course regarding this reserve, while smaller in scale, was similar to other

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3/ 8 FCC Rcd at 7165.

4/ *Id.*

5/ *See* 47 U.S.C. § 303(g) (The Commission shall "[s]tudy new uses for radio, provide for experimental uses of frequencies, and generally encourage the larger and more effective use of radio in the public interest.")

earlier actions in which the Commission set aside spectrum for new services and future growth in existing services, including the allocation of "emerging technologies spectrum" at 2 GHz (Docket No. 92-9) and the establishment of "land mobile reserve bands" in the mid-1970s in the 800/900 MHz bands (Docket No. 18262). The FCC's far-sighted decisions to reserve frequencies in those proceedings paved the way for the introduction of a number of new services, some of which were unforeseen at the time the reserve was established. For example, the land mobile reserve enabled the establishment of narrowband PCS almost two decades later.

In 1994, the Commission adopted narrowband PCS licensing rules and began auctioning the spectrum that it had channelized. The Commission, based upon substantial input from the industry at large, carefully channelized two MHz of the narrowband PCS spectrum into nationwide, regional, MTA and BTA frequencies.[6/] As a result of the initial auctions, several nationwide and regional channels were licensed, and the Commission received substantial payments from a number of carriers, including PageNet, for these frequencies. More than one-half of the initial two MHz that were channelized have yet to be assigned.

The Commission now proposes, in addition to auctioning the remainder of the two MHz that were initially channelized, to release for licensing the one MHz reserve. According to the Commission, making this spectrum available now would serve the

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[6/] There has always been controversy abut the extent to which BTA licenses are too small to produce viable systems. *See* Section III, *infra*.

public interest because it would: (1) facilitate competition; (2) open the market to new entrants; and (3) allow existing narrowband PCS licenses to expand their systems through access to additional spectrum. PageNet submits that releasing the spectrum reserve at this time would not be in the public interest; rather, it could have dire, unintended, adverse consequences to carriers and the public they serve. Importantly, as detailed below, the Commission does not need to channelize and auction the reserve spectrum at this time to achieve the goals stated in the *Further Notice*. In fact, as explained below, the third goal, the only objective not already achieved, will be frustrated if the Commission releases the spectrum reserve at this time.

1. Competition Will Not Be Materially Promoted By Release Of The Reserve

First, the Commission does not need to release the narrowband spectrum reserve now in order to achieve a competitive marketplace. There are already many well-financed paging companies who hold narrowband PCS licenses. It is safe to assume there will be even more when the Commission auctions the remaining portion of the two MHz it initially channelized. Moreover, the narrowband PCS services compete with a variety of existing paging services, whether offered over traditional paging channels, SMR channels, or cellular or PCS channels. Broadband licensees, for example, exercising the freedom given to them by the Commission,[7/] have used their broadband frequencies in part to offer their own messaging services in competition with the narrowband offerings. Sprint Spectrum is widely marketing its

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[7/] *See Annual CMRS Report*, 10 FCC Rcd 8844, 8860 (1995).

broadband PCS service with voice, advanced messaging, and paging services in a single handset. Nextel has a similar offering using SMR frequencies.

Narrowband messaging services, moreover, compete directly with wireline services that are indistinguishable from the caller's perspective. It is clear that messaging services are currently subject to a very high degree of competition. Furthermore, those carriers must also compete with both wireline and broadband carriers who are offering their own advanced messaging services. Clearly narrowband competition is at least as vigorously intense as it is for basic paging services.[8/]

2. The Messaging Market Is Already Open To Entry

Second, the paging/narrowband PCS market is already open to new entrants thanks in large part to the Commission's existing flexible use policies and the substantial amount of spectrum already licensed. As noted above, these services can be offered today over a plethora of different frequencies, licensed to a profusion of different companies who vigorously compete against one another. The auction for the remainder of the two MHz of narrowband spectrum that has already been channelized will provide additional opportunities for new entry. In these circumstances, the benefits from releasing the reserve spectrum in terms of opportunity for new entry do not outweigh the lost potential to accommodate in the future the growth and development

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8/ As the Commission has repeatedly found, "the paging industry is highly competitive." *See id.* at 8867-68; *In re Implementation of Sections 3(n) and 322 of the Communications Act - Regulatory Treatment of Mobile Services, Second Report and Order*, 9 FCC Rcd 1411, 1468 (1994).

of specific present and new PCS services that such a release would represent.

3. Release Of The Reserve May Eliminate The Ability Of Narrowband PCS Licensees To Expand Their Systems

Third, while allowing existing licensees to expand their systems through access to additional spectrum is a critical goal, it will actually be stymied if the Commission releases the reserve spectrum too soon. To ensure frequencies are available to expand existing narrowband PCS systems, as well as those systems to be built by licensees in the remainder of the initial two MHz, the Commission needs to continue for the time being to hold the one MHz of unchannelized spectrum in reserve.

As a practical matter, the already-licensed nationwide and regional narrowband PCS systems have yet to come to market in any reasonable way. Not surprisingly with a frequency allocation for new services, design issues needed to be completed after the Commission's rules were finalized and licenses granted. There are also series of equipment testing that must be satisfactorily completed before roll-out. Attempts to roll-out prematurely can have substantial adverse consequences for the public's perception of the quality of services. Manufacturers and, thus, carriers, have only recently completed the technical validation of the first narrowband PCS systems. Concomitantly, they have only begun the substantial build-outs of the networks required to bring service to the public.[9/]

[9/] PageNet is currently constructing its narrowband network. Service in Dallas/Ft. Worth was introduced on February 24, 1997, and will be introduced nationwide on a market-by-market basis. *See* Paging Network, Inc., 1996 Annual Report

Furthermore, at this early stage where less than one-half of the initial two MHz has been licensed, it is much too early to predict when the reserve spectrum will be needed by the licensees in the initial two MHz in order to expand their systems. As explained above, the reserve was set aside in the *Narrowband PCS Allocation Order* for the future to enable the Commission to respond to the growth and development of specific narrowband PCS services and other future services. Any projections of such growth and future development so as to justify the release of the spectrum at this time would constitute pure speculation: there is no substantial customer experience with narrowband PCS sufficient to predict, for example, the amount of information content which will evolve as the norm, and the extent to which narrowband PCS services will exploit the two-way directionality for which they are authorized. Will most users actually send high information context messages from the messaging devices or, as now, will the information flow be predominantly <u>from</u> the caller to the paged party? Will the usage be predominantly wide-area local (*e.g.* "MTA") or will the customer usage patterns dictate larger or smaller system geography?

In short, it is simply too early to predict density, size and scope of narrowband PCS, let alone the timing of the need for the reserve spectrum.[10/] The FCC must retain the "flexibility in the future to channelize and license the remaining one MHz of

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at 11. PageNet will begin testing of acknowledgement paging in mid-1997. *Id.* at 13.

10/ As such, it is impossible to address the Commission's request for comment as to proper channelization of the reserve.

spectrum as [narrowband PCS] service develops."[11] [Emphasis added.] Therefore PageNet urges the Commission to make no decision with respect to the reserve now, but rather to let the market dictate at a later time when, and how, the reserve allocation is released.

B. Release Of The Reserve Would Have Unfair Adverse Consequences For Licensees That Bid And Paid For Parts Of The Initial Two MHz Of Narrowband PCS Spectrum

The Commission cannot ignore the potential negative consequences of an inconsistent spectrum policy for narrowband PCS. In the *Narrowband PCS Allocation Order*, the Commission authorized the licensing of two MHz of narrowband frequencies. Businesses such as PageNet made significant financial judgments based on the limited availability of narrowband PCS in the short run. As a policy and legal matter, the Commission should not limit the number of licenses available in the first few auctions and then flood the market in the last auction. Yet this is what the *Further Notice* proposes. Such an inconsistent and arbitrary auction policy would have a clear negative anti-competitive impact. As the Commission knows, the monies paid for licenses at auction must be recovered by the licensees through service revenues. If the reserve is released at this time, auction winners are likely to pay a substantially lower price for their frequencies, giving them an obvious competitive advantage over the initial licensees.

C. The Proposal To Release The Spectrum Would Be An Unlawful Change In The FCC's Course

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[11] *Narrowband PCS Allocation Order*, 8 FCC Rcd at 7165.

Not only is the Commission's proposal to release the reserve spectrum now unnecessary to achieve its stated objectives and the epitome of an unsound policy, it is unlawful because it is inconsistent with the FCC's earlier decisions. In the *Narrowband PCS Allocation Order*, the Commission concluded that the spectrum should be held in reserve until narrowband PCS services have an opportunity to develop. As explained above, there is no adequate justification for a departure from this earlier determination. In the short time since licenses were granted, the PCS services certainly have not developed in any material sense -- systems are just now being rolled out. It is well established that, under Section 553 of the Administrative Procedures Act, an agency may not adopt a sudden, unsubstantiated change in its course. Rather, "an agency changing its course must supply a reasoned analysis" supported by the record. *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Automobile Ins. Co.*, 103 S.Ct 2856, 2874 (1983); *Greater Boston Television Corp. v. FCC*, 444 F.2d 841, 852 (D.C. Cir. 1970), *cert denied* 91 S.Ct 2233 (1971).

The *Further Notice* offers no analysis of any kind attempting to justify the Commission's proposed change of course. The *Further Notice* does not cite to any substantiation in the comments of the parties that a change in course is appropriate. In the *Narrowband PCS Allocation Order*, the Commission channelized two MHz and kept one MHz in reserve based upon a substantial record consisting of a variety of studies and projections about the development of narrowband PCS.[12/] The two

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[12/] *Narrowband PCS Allocation Order*, 8 FCC Rcd at 7163 (discussing numerous market demand studies and projections).

parties referred to by the FCC in the *Further Notice* in support of the proposal to release the reserve -- American Paging, Inc. ("AP") and Blooston, Mordkofsky, Jackson & Dickens ("BMJD") -- do not attempt to counter these studies or the Commission's findings with analyses of their own. At bottom, they simply ask that the reserve spectrum (or part of it) be made available now.[13/] Thus, there is no basis to conclude, pursuant to a reasoned analysis based on a record, that the FCC should change its course.

Moreover, there is no acknowledgement in the *Further Notice*, in fact, that the proposal affecting the reserve would be a change in course. Certainly, the *Further Notice* does not suggest that the reserve should be released to respond to any growth or development of any specific narrowband service, the criteria for releasing the spectrum to narrowband PCS et forth in the *Narrowband PCS Allocation Order*. Nor does the *Further Notice* state that the reserve should be released to support the growth or development of some other new service. Accordingly, there can be little question that the Commission is proposing to change its course. Without any acknowledgment that it is doing so and without any reasoned analysis justifying the change, release of

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13/ AP, only four months after the initial two MHz of narrowband spectrum was channelized, sought the release of the reserve spectrum to increase "competitive opportunities," read simply, increase the number of channels to be licensed. Comments of American Paging, Inc., GEN Docket No. 90-314 at 3 (Sept. 16, 1994). BMJD, in contrast, recognized the need to maintain a reserve "for later channelization and licensing, if needed, as narrowband PCS services develop," and advocated a release of some of the spectrum for additional response channels only. Reply Comments of BMJD, GEN Docket No. 90-314 at 10-11 (Oct. 3, 1994).

the reserve spectrum at this time would contravene the Administrative Procedure Act and the well-established holdings in *State Farm* and *Greater Boston*.

II. The Commission Should Adhere To Its Existing Construction Criteria Rather Than Adopt A "Substantial Service" Test

The FCC's current rules require that licensees for narrowband PCS meet specified geographic area or population buildout requirements at five and ten years respectively.[14/] While the FCC recognized that narrowband PCS licensees possessed strong economic and competitive incentives to meet service demands, these construction rules were adopted "to ensure that spectrum is being effectively utilized."[15/] The *Further Notice* proposes to overhaul the Commission's buildout requirements to allow licensees to satisfy their buildout requirements based on "substantial service" to the public. As precedent for its action, the *Further Notice* notes that the Commission recently adopted a "substantial service" test for traditional paging licensed at 929 and 931 MHz. PageNet urges the Commission to continue to rely on its existing population and geographic coverage criteria and to disavow its proposal to use "substantial service" as a measure of performance for narrowband PCS.

The "substantial service" test, if adopted, will serve as an invitation to speculators to participate in these frequency auctions. The test will encourage speculators to hold spectrum until the market is willing to pay them value in substantial

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14/ 47 C.F.R. § 24.103.

15/ *Narrowband PCS Allocation Order*, 8 FCC Rcd at 7168, *modified in part on recon.*, *Narrowband PCS Reconsideration Order*, 9 FCC Rcd at 1313-14.

excess of what they paid at auction. Such speculators will be able to retain the frequencies, under the Commission's proposal, for ten years without even having built a single transmitter, or provided service to a single subscriber. This, in turn, will create false scarcities in narrowband PCS spectrum serving to drive up auction prices artificially. Moreover, it will tend to increase prices for frequencies in the marketplace and push up prices for services in an uneconomic manner. Only at the last minute, if its speculation does not succeed, will an entity relying on the substantial service test have any obligation to put in facilities, or to serve the public. In essence, speculators will be able to take frequencies out of circulation for extended periods to meet their own economic goals, while depriving the public of the benefit of service over those frequencies for no public interest purpose. Thus, as a policy matter, the existing construction requirements should remain in place.

Using the substantial service test as an alternative for the population and/or coverage requirements poses another problem. Any licensee in danger of failing to meet the population coverage test can simply claim that it has complied with the substantial service test and leave it to the Commission to convince a court that it has failed to do so. Since there are virtually no precedents to flesh out this concept, nor any discussion as to what would constitute substantial service in this context, it would be very difficult to convince a court that the Commission has given fair notice to licensees of what is expected of them. In short, if the Commission adopts the substantial service test,

it might just as well throw away the population coverage requirements. To do so, however, would be to directly violate § 309(j)(4)(B) of the Act which required performance requirements and protection against abuse. The solution is an obvious one: the elimination of the substantial service test. In the absence of a demonstrated need for an alternate type of showing, this standard is likely to engender great difficulties with little benefit to the public.

While it is apparent how the objective coverage and population criteria are administratively simple and encourage development of wide-area systems, it is not at all clear how the substantial service standard developed for an entirely different purpose could be an alternate means to these same ends. Using the substantial service test would be anything but administratively simple. Because of the complete lack of any definite standard, substantial service must be determined on a case-by-case basis. Here, however, the *Further Notice* gives no indication of what showing would satisfy this test and also comply with the mandate of § 309(j)(4)(B) of the Act.[16/] Given the difficulty in applying this same standard in other services where renewal proceedings can drag on for decades, *see e.g., RKO*

16/ The Commission has previously relied upon § 309(j)(4)(B), in adopting coverage requirements for paging channels, stating that "coverage requirements are needed as performance requirements to deter speculation while promoting prompt service to the public." Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Further Development of Paging Systems, 6 FR 11616, ¶ 63 (March 12, 1997). Although it subsequently has adopted a substantial service test in the paging context as well, PageNet submits that the Commission was correct when it interpreted § 309(j)(4)(B) as requiring strict coverage requirements in order to assure performance.

General, Inc., 3 FCC Rcd 5057 (1988), using it here is an invitation to prolonged litigation, inconsistent with the Commission's goal of administrative efficiency, and will prolong blockage of operating incumbents wishing to expand their existing wide-area service to meet the requirements of the public.

In addition, the proposal in the *Further Notice* to eliminate the current construction requirements in favor of a "substantial basis" test would not, as a practical matter, allow the Commission to treat narrowband PCS and paging similarly despite the claims in the *Further Notice*. Indeed, it is not clear such an objective is achievable. In the first place, as the Commission notes, there are no regional or nationwide paging licenses. So the goal of parity in performance requirements could not even apply to those narrowband licenses authorized to provide service on a regional or nationwide basis. Secondly, as the *Further Notice* observes, paging channels were already substantially built out by paging licensees at the time the construction requirements were relaxed, whereas PCS licensees are only beginning their build out processes. *Further Notice*, ¶ 45. In short, there are significant differences between the paging channels and PCS frequencies so as to rule out the justification for treating them similarly.

For similar reasons, as a matter of law, the *Further Notice's* proposal to all but eliminate the construction requirements is insupportable. Because the adoption of a "substantial service" alternative would render the existing requirements nugatory, even if they are formally retained, the *Further Notice* proposal would represent a change in course from

decisions made in the *Narrowband PCS Allocation Order* and decision on reconsideration. There, the FCC concluded that the construction requirements were necessary to ensure efficient use of the spectrum. While examples were given in the *Further Notice* of selected services in which relaxed construction requirements were adopted, the Commission did not directly address the reasons the existing construction requirements were adopted for narrowband PCS. Nor, PageNet submits, will the record developed in this proceeding support a change in course. Accordingly, under the Administrative Procedure Act, *State Farm*, *supra*, and *Greater Boston*, *supra*, there is an inadequate basis for effectively eliminating the construction requirements through the use of "substantial service."

III. The Remaining Channelized Spectrum Should Be Licensed On An MTA Basis Only

A. 50 kHz Channels

The Commission's decision to allocate narrowband PCS frequencies on a BTA basis has always been controversial. Many commenters, including PageNet, urged the Commission not to create BTAs because the coverage area of BTAs does not represent the likely service areas. These commenters also demonstrated that BTA licensing would produce unacceptable interference in many many circumstances. The Commission's decision, in fact, to use BTAs was not made based on its firm conclusion that BTA service areas would exist, but rather that BTA licenses may be necessary to assure small business participation in narrowband auctions.

As the Commission now recognizes, it does not need to license in BTAs in order to assure small business participation.

The Commission correctly recognizes that 60 of the 80 900 MHz SMR auction winners qualify as small businesses. *See* FNPRM at ¶ 29. MTAs. Thus, PageNet supports the Commission's conclusion to eliminate BTA licenses.

However, PageNet also does not support the Commission's proposal to artificially create geographic areas larger than MTAs for the remaining channels. MTAs are the appropriate coverage area for already allocated channels remaining for auction. MTAs represent the coverage required by the vast majority of paging subscribers. As PageNet and others have explained, the geographic scope of paging service has grown from being very localized, towards MTA, or "wide area local" coverage over the last several years. Of PageNet's subscriber base which represents approximately 23% of the almost 40,000 units in service, upwards of 85% use wide-area local services, whereas the remaining percentage subscribe to more regional and nationwide service. Because the wide-area local coverage is still the core paging service, it is appropriate to license the remaining allocation on a MTA basis.

Moreover, licensing of the rest of the channels allocated on an MTA basis represents the most efficient frequency utilization. Carriers in this circumstance will have substantial flexibility to offer wide-area local services, and achieve economies of scale,[17/] without being saddled with geographic coverage which

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[17/] As the Commission has previously observed, MTAs:

(1) Define regions that are large enough to permit systems to re-use spectrum efficiently;
(2) Provide the economies of scale necessary to allow a license to provide complete state-of-the-art service;

goes beyond the scope of most systems. Those whose service design is multiple MTAs would not be prohibited from purchasing these MTAs. By virtue of MTA licensing, carriers retain the flexibility to offer regional service which meets their own subscriber's needs. For example, one carrier may choose to offer MTA services, whereas another may want to serve Florida, Georgia and South Carolina, and another carrier may want to serve Florida, Alabama and Mississippi. Allowing carriers to do their own aggregation in this fashion preserves all carrier's options, regardless of their specific business plan. In other words, an important aspect of MTAs is that they will not automatically disqualify a majority of existing carriers from participating in the auction while, at the same time, allowing for aggregation of adjacent licenses for larger than MTA service areas.

B. The Response Channels Designated As BTA Should Be Licensed As MTAs

Response channels are a key potential component of messaging services. For example, the "talk-back" or response capability allows systems to achieve greater spectrum efficiency by using the response channels as locator channels. The outbound channels can therefore be utilized more efficiently.

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(3) Allow licensees the flexibility and coverage required to fulfill their customers' desires for complete coverage throughout their particular business areas; and

(4) Contain sufficient population and geographic area to support economically viable mobile service systems.

See Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, Notice of Proposed Rulemaking, 8 FCC Rcd 3950, 3953 (¶ 15)(1993); *Narrowband PCS Reconsideration Order*, 9 FCC Rcd at 1331.

Given the importance of these channels to licensees who wish to enhance their traditional paging service efficiency or to migrate to new or enhanced services on their existing frequencies, all of the response channels must be made available in a neutral manner which neither benefits nor prejudices existing licensees based on their existing licenses and services. The only way to achieve this result is to license all response channels on an MTA basis.

As noted previously, MTAs represent the greatest preponderance of the systems today based on subscriber needs for wide-area and local services. If half of the response channels are licensed as regional and half licensed as MTA, the regional and nationwide licensees will be able to economically apply for all response channels, whether regional or MTA. However, the converse is not true. Carriers with systems serving MTAs would be far less likely to be able to rationally apply for the regional licenses. In order for those licensees to have rational economic value, licensees would have to be assured that they could disaggregate these channels and sell the channels not associated with its MTA; moreover, the prices for these channels would need to at least equal the proportionate share of the channels as well as the auction participation and disaggregation costs. Obviously, there are no such assurances, so carriers seeking MTA response channels could be disadvantaged *vis a vis* those seeking regional capability. The only way to eliminate this unwarranted advantage is to license all response channels on an MTA basis.