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

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COMMENTS OF THE PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION

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COMMENTS OF
THE PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION

The Personal Communications Industry Association ("PCIA"),[1] by its attorneys, respectfully submits its comments on the Further Notice of Proposed Rulemaking in the above-captioned docket.[2] PCIA believes that the Commission's proposals must be modified in significant respects in order to maintain and enhance a narrowband personal communications service ("PCS") licensing scheme that best serves the public interest.

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[1] PCIA is the international trade association created to represent the interests of both the commercial and the private mobile radio service communications industries. PCIA's Federation of Councils includes: the Paging and Narrowband PCS Alliance, the Broadband PCS Alliance, the Specialized Mobile Radio Alliance, the Site Owners and Managers Association, the Association of Wireless System Integrators, the Association of Communications Technicians, and the Private System Users Alliance. In addition, as the FCC-appointed frequency coordinator for the 450-512 MHz bands in the Business Radio Service, the 800 and 900 MHz Business Pools, the 800 MHz General Category frequencies for Business Eligibles and conventional SMR systems, and the 929 MHz paging frequencies, PCIA represents and serves the interests of tens of thousands of licensees.

[2] *Amendment of the Commission's Rules To Establish New Personal Communications Services, Narrowband PCS*, FCC 97-140 (Apr. 23, 1997) (Report and Order and Further Notice of Proposed Rulemaking) ("*Second Report and Order*" and "*Further Notice*").

I. INTRODUCTION AND SUMMARY

In this proceeding, the Commission seeks comment on proposed rules relating to the continued auctioning and licensing of narrowband PCS spectrum. In particular, the Commission: (1) proposes modifications to the existing spectrum allocation plan for the channelized two MHz of narrowband PCS frequencies; (2) seeks comment on the immediate release of and appropriate channelization for the reserve one MHz of spectrum; (3) addresses eligibility for the narrowband response channels and their use; and (4) recommends changes to the buildout requirements and competitive bidding rules. According to the *Further Notice*, the Commission's proposed actions are intended 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."[3]

PCIA endorses the Commission's goal of creating a regulatory framework for narrowband PCS that will provide as many Americans as possible with a wide variety of reasonably priced communications services. In order to achieve this mutually agreed upon goal, however, the Commission should modify its proposals in a number of important respects.

First, PCIA supports the Commission's proposal to eliminate service areas based on Basic Trading Areas ("BTAs") in the remainder of the two MHz of already allocated narrowband PCS spectrum. The channels currently allocated for BTAs should be licensed based on Major Trading Areas ("MTAs"), and not nationwide areas as proposed by the Commission.[4] MTA-

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[3] *Further Notice*, ¶ 2 (citing 47 U.S.C. §§ 332(a), 257).

[4] PCIA at this time takes no position on the reallocation of the BTA-based spectrum for regional licenses, because the industry has not reached a consensus.

based allocations will advance the public interest because such service areas provide the proper balance between network buildout costs and revenues that can be collected from subscribers. In addition, MTAs are affordable by small businesses, and can be pieced together to form nationwide or regional service areas. BTA-based networks, on the other hand, are too expensive to construct, relative to the amount of revenue they can be expected to produce. Adding new nationwide licenses at this time potentially could disrupt the buildout of the already granted nationwide authorizations, contrary to the public interest.

Second, the Commission should not at this time adopt channelization plans for or release for licensing the remaining one MHz of reserve spectrum until the industry has an opportunity to compile a study of its spectrum needs and report the results of this study to the FCC — a task that PCIA commits will be completed by June 30, 1998. The study will also evaluate the continuing need for the narrowband PCS spectrum cap. Premature adoption of a channelization plan and scheduling of an auction for licenses in this reserve spectrum could undercut achievement of the Commission's spectrum policy goals, including the efficient use of spectrum and the provision of competitive services to the public. Preparation of a complete analysis will instead provide a more rational basis for Commission action.

Third, eligibility for response channels should continue to be limited to existing paging licensees for mobile-to-base transmissions. Existing paging licensees must have unfettered access to these response channels in order to allow them to construct the two-way systems necessary to compete effectively in the messaging marketplace. Such competition will provide the public with a greater choice of messaging services. In addition, PCIA currently is reevaluating the existing seven watt power limit to assess whether it strikes the optimal balance

between permitting clear mobile-to-base communications while at the same time preventing harmful interference to other transmissions.

Fourth, the Commission should not allow licensees to meet their construction requirements by providing "substantial service" to the public. As PCIA has pointed out in other contexts (*e.g.*, market area licensing), the vagueness of this term will make it possible for speculators and application mills to bid on spectrum with no intention of ever providing service to the public. The Commission should instead retain its current population and area-based construction requirements, and it should toll the beginning of the five-year buildout benchmark until the date the last narrowband PCS market area license in the originally allocated two MHz of spectrum is issued to take into account the substantial delays in equipment (infrastructure and subscriber) availability. This rule will deter speculators and ensure that the public is provided with narrowband PCS service while allowing licensees sufficient time, in light of the equipment delays, to construct their networks.

Finally, the proposed competitive bidding rules should be modified to ensure the integrity of the auction process while maximizing the likelihood that the auction winner will provide service to the public in a rapid and efficient manner. These goals can best be accomplished by: requiring upfront payments by applicants for each frequency in each market on which they seek to bid; providing applicants with full information throughout the auction process about competing bidders; allowing for geographic partitioning with safeguards against abuses; providing defined safe harbors from the anti-collusion rules to permit necessary and beneficial business discussions to continue to take place; and granting small businesses bidding credits and an installment payment option while erecting safeguards against abuses of this preference.

II. THE REMAINDER OF THE TWO MHz OF ALREADY ALLOCATED NARROWBAND PCS SPECTRUM SHOULD BE LICENSED BASED ON MTAs, RATHER THAN EITHER BTAs OR NATIONWIDE AREAS

The Commission seeks comment on its proposal to eliminate some or all BTA licensing, and replace these BTAs with "a combination of MTAs, regional licensing areas, and nationwide licensing."[5] Specifically, the *Further Notice* proposes: (1) redesignating the two remaining 50 kHz paired channels as nationwide channels; (2) establishing one nationwide, three regional, and one MTA-based channel pairs from the five 50/12.5 kHz channel pairs; and (3) converting the four BTA-based 12.5 kHz unpaired response channels to regional channels.[6]

PCIA endorses the Commission's plan to eliminate BTA licensing for narrowband PCS channels in the remaining portion of the allocated two MHz of spectrum.[7] Contrary to its proposal, however, the Commission should not reallocate spectrum to create new nationwide authorizations, but should authorize MTA licenses. Because the industry, after considerable effort, has been unable to reach a consensus with respect to the reallocation of spectrum for additional regional licenses, PCIA takes no position on this element of the proposal.

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[5] *Id.*, ¶ 31.

[6] *Id.*

[7] *Id.*

As the *Further Notice* recognized, PCIA has previously opposed the use of BTA-based service areas for narrowband PCS.[8] BTAs are simply too small to be economically viable, particularly for new entrants seeking to serve a single BTA. The buildout costs, in combination with the potential coverage area, render BTAs an ineffective service area for narrowband PCS service.

MTAs, in contrast, represent a more reasonable and appropriate service area. Their larger size permits a narrowband PCS licensee to establish a large enough service area to be competitive with other suppliers of messaging services and to have access to a greater number of potential customers necessary to support the system's financial viability. While construction costs obviously will be higher, they are not excessive.

Although PCIA has supported Major Economic Areas ("MEAs") for other services, MTAs are more appropriate license areas for narrowband PCS than MEAs for at least three reasons. First, the regional license areas for this service are built on the basis of MTAs. Licensees that hold both regional and MTA licenses may be able to achieve certain efficiencies, given the correspondence in boundaries. MTAs and MEAs are similar in many respects, but they are sufficiently different that the MEA boundaries would differ from the regional license borders.[9]

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[8] *Id.*, ¶ 27.

[9] The fact that MTAs are the building blocks for regional narrowband PCS licenses thus distinguishes this service from Part 22 and Part 90 paging, where PCIA has supported adoption of MEA-based service areas. *See* PCIA Petition for Reconsideration, WT Dkt. No. 96-18, at 19-21 (filed Apr. 11, 1997).

Second, the Commission's *Interconnection Order* defined the local service area of commercial mobile radio service ("CMRS") providers, including narrowband PCS operators, as equivalent to MTA boundaries.[10] Using MTAs for narrowband PCS licensees thus would simplify their interconnection and billing arrangements with local carriers. Third, unlike paging services, PCIA has already acquired the rights from the copyright owner of MTAs – Rand McNally – to use MTAs to define narrowband PCS service areas.

MTA-sized areas give potential applicants a high degree of flexibility to pursue their business plans. They can focus on a single MTA, or seek to stitch together nationwide or their own regional service areas. This flexibility should promote maximum participation by a variety of operators, specifically including small businesses and new entrants.

Indeed, it is reasonable to expect small businesses to have sufficient resources to purchase and construct MTA-sized areas. PCIA has repeatedly pointed out that narrowband messaging services are conducive to small business entry because of the lower costs. As was pointed out by the *Further Notice*, in the 900 MHz specialized mobile radio ("SMR") auction, 60 out of 80 high bidders were small businesses.[11] There is no reason to expect that small businesses will not participate with equal vigor in the narrowband PCS auction, thereby fulfilling the Congressional mandate to "ensure that small businesses . . . are given the opportunity to participate in the provision of spectrum-based services."[12]

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[10] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499 (1996) (First Report and Order), stayed in part pending judicial review *sub nom. Iowa Utils. Bd. v. FCC*, 109 F.3d 418 (8th Cir. 1996).

[11] *Further Notice*, ¶ 29.

[12] 47 U.S.C. § 309(j)(4)(D).

PCIA opposes reallocating any of the remaining unlicensed portion of the allocated two MHz of narrowband PCS spectrum for nationwide licenses. Such action would not be equitable to the existing nationwide operators who valued the spectrum, placed bids, and obtained financing based on certain understandings about the Commission's licensing plan. PCIA understands the Commission's view that its 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."[13] Yet, adopting additional nationwide narrowband PCS licenses at this time would serve to undercut this goal. Such action may well impede the ability of the current nationwide operators effectively to implement their business and construction plans. If network buildout does not take place, these carriers will be unable to offer service to the public — thereby defeating achievement of the Commission's principles. Thus, in an auction-based environment, the Commission's spectrum policy is served by taking into account the effects of reallocating spectrum for new national narrowband PCS licenses.[14]

III. THE RESERVE SPECTRUM SHOULD NOT BE RELEASED AND CHANNELIZED, AND THE NARROWBAND PCS SPECTRUM CAP SHOULD NOT BE MODIFIED UNTIL THE SPECTRUM NEEDS OF THE INDUSTRY ARE STUDIED

The Commission tentatively concluded that "the one MHz of spectrum that we reserved in the *PCS **First Report and Order*** should now be channelized and licensed."[15] The *Further*

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[13] *Further Notice*, ¶ 32.

[14] As noted previously, PCIA at this time is not taking a position on the Commission's proposal to shift spectrum to additional regional licenses.

[15] *Further Notice*, ¶ 34.

Notice also seeks comment on an appropriate channelization plan and whether the frequencies should be allocated on a paired or unpaired basis.[16]

Contrary to the Commission's tentative conclusion, the public interest will not be served by a release of the reserve spectrum until a determination has been made about whether and when such spectrum will be needed. Accordingly, it is also not possible at present to make a rational decision about appropriate channelization. The Commission should therefore defer addressing the reserve one MHz until the industry has an opportunity to produce a study of narrowband PCS spectrum usage needs and reports these results to the FCC. PCIA will coordinate this study, and will make its report to the Commission by June 30, 1998.

It is appropriate for the Commission to ensure that it develops a reasoned plan for the channelization and release of the third MHz of narrowband PCS spectrum. To date, only the nationwide and regional licenses have been granted. Moreover, buildout of these systems has been somewhat delayed as a result of delays in equipment production and delivery. In addition, members of the messaging industry have focused their recent efforts on deploying narrowband PCS and traditional messaging services in light of numerous regulatory proposals and changes. As a result, they have not been comprehensively evaluating future spectrum needs.

Premature release of the spectrum or the hasty adoption of an inappropriate channelization plan would have adverse effects for service to the public. Given the current environment, where hundreds of wireless licenses have been granted in recent years and the licensees are attempting to build out their systems, a release of narrowband PCS spectrum before the demand has been defined increases the risk of decreasing investor confidence in the ability of

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[16] *Id.*

existing licensees to execute their business plans. Similarly, an inappropriate channelization plan could lead to inefficient spectrum usage. In either case, service provided to the public will be adversely affected.

The PCIA study, to be concluded in approximately one year, will allow the Commission to evaluate carefully the costs and benefits of the release of additional spectrum as well as the most appropriate channelization plan. A period of one year will afford sufficient time to undertake the necessary detailed analysis while not unduly delaying Commission action on its proposal. The benefits of proceeding carefully and on a well-informed basis clearly outweigh any possible harms that might result from the limited delay.[17]

The Commission further queries whether the narrowband PCS spectrum aggregation limit should be modified in light of its tentative decision to release the one MHz reserve spectrum for licensing and auction.[18] At present, narrowband PCS licensees are limited to three 50 kHz channels, either paired or unpaired, at any geographic point.[19] PCIA believes that the spectrum cap should remain unchanged for the existing two MHz of allocated spectrum.

Regarding the one MHz of reserve spectrum, however, the need for the spectrum cap should be part of the aforementioned spectrum needs study. Business plans for pursuing

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[17] The Commission queries whether it should auction the reserve spectrum in conjunction with the other narrowband spectrum. *Further Notice*, ¶ 58. Given PCIA's proposal to prepare a spectrum study in advance of the Commission's adoption of rules for the reserve spectrum, the Commission should not proceed to combine the reserve spectrum auction with the auction for other narrowband authorizations.

[18] *Id.*, ¶ 35.

[19] 47 C.F.R. § 24.101(a) (1996); *Amendment of the Commission's Rules To Establish New Narrowband Personal Communications Services*, 8 FCC Rcd 7162, 7168 n.21 (1993) ("*PCS First Report and Order*").

narrowband PCS authorizations in the allocated two MHz of spectrum were premised on the applicability of the existing spectrum cap. When more narrowband PCS spectrum is released to the public, it will be appropriate for the Commission to re-evaluate its spectrum cap. Obviously, should the Commission release more spectrum, the competitive implications of controlling any given amount of spectrum will change as well. The spectrum needs study proposed by PCIA will be an excellent vehicle for evaluating the spectrum cap considerations.

IV. ELIGIBILITY FOR RESPONSE CHANNELS SHOULD CONTINUE TO BE LIMITED TO EXISTING PAGING LICENSEES AND SHOULD BE RESERVED FOR MOBILE-TO-BASE RESPONSE TRANSMISSIONS

At present, eligibility for narrowband PCS response channels is limited to existing paging licensees, and these channels can be used only for mobile-to-base response transmissions of seven watts or less. In the *Further Notice*, the Commission proposes to open up the eligibility requirements for these channels to all qualified applicants and to allow the channels to be used for purposes other than mobile-to-base response transmissions, provided the licensee complies with the Commission's power and transmission rules.[20]

PCIA disagrees with the Commission's conclusion that removing the eligibility restrictions for the response channels will best serve the public interest. Eligibility should be limited to existing paging licensees, and the channels should be used only for mobile-to-base transmissions in order to allow existing one-way paging operators the opportunity to convert their networks to two-way operation.[21] Without access to these channels for mobile-to-base

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[20] *Further Notice*, ¶ 40.

[21] As the Commission noted in adopting its narrowband PCS rules, the provision of response channels for use by existing licensees "will permit existing paging operations to be

(Continued . . .)

transmissions, incumbent one-way providers will not be able to upgrade their operations to compete with the two-way services that will be offered by narrowband PCS licensees. Under these circumstances, the Commission could in fact increase the number of services offered to consumers by defining the eligibility for channels to be used solely for response transmissions.

In addition, consistent with its position advocated in previous filings, PCIA urges the Commission to permit any geographic area licensee as well as any other incumbent to file for a response channel in any MTA (or other service area adopted by the Commission) in which there is an overlap with the licensee's paging area.[22] This position accommodates the new licensing structure recently adopted by the Commission for Part 22 and Part 90 licensees, and will ensure that grandfathered incumbents as well as future market area licensees will be eligible to apply for the available response channels.

PCIA is concerned that additional use of the channels could create interference problems. The experiences of those carriers who have initiated service have raised some issues regarding the appropriateness of the seven watt peak output power set by the Commission in Section 24.132(a), (b) of the Commission's Rules.[23] PCIA's Technical Committee is being called upon to begin a study of the appropriateness of this cap and expects to contribute results of its work to the Commission in the near future. The study will examine the maximum power

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(. . . Continued)
upgraded and provide some acknowledgment and messaging capability." *PCS First Report and Order*, 8 FCC at 7165.

[22] *See* PCIA Petition for Reconsideration, GEN Dkt. 90-314, at 3-4 (filed Oct. 7, 1994).

[23] 47 C.F.R. § 24.132(a), (b) (1996).

level that best balances the need for clear mobile-to-base transmissions with the need to prevent interference with other transmissions, while also taking into account competitive considerations.

V. INSTEAD OF ADDING A "SUBSTANTIAL SERVICE" OPTION, THE PRESENT CONSTRUCTION AND COVERAGE SCHEDULES FOR NARROWBAND PCS SHOULD BE MAINTAINED, BUT SHOULD BE TOLLED UNTIL THE LAST NARROWBAND PCS LICENSE IS ISSUED

In its 1994 rulemaking establishing the narrowband personal communications service, the FCC adopted construction benchmarks for narrowband PCS licensees, requiring that these licensees meet specified area or population-based buildout requirements at five- and ten-year intervals.[24] The *Further Notice* seeks comment on: (1) conforming the narrowband PCS rules to the 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;"[25] (2) conforming the coverage benchmarks for narrowband PCS to those for geographic area paging;[26] and (3) eliminating all coverage requirements for narrowband PCS.[27]

In the market area paging docket, PCIA opposed adoption of the "substantial service" alternative for market area licensees to meet applicable coverage requirements because such a

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[24] 47 C.F.R. § 24.103 (1996).

[25] *Further Notice*, ¶ 44 (emphasis added). As discussed below, PCIA has sought reconsideration of the Commission's decision to permit market area paging licensees to meet specified construction requirements by means of a substantial service showing.

[26] *Id.*, ¶ 45.

[27] *Id.*, ¶ 46.

requirement increases the opportunity for speculation and fraud in the auction process.[28] PCIA opposes the "substantial service" option in this docket for the same reasons it did so earlier. Specifically, the substantial service test — and the fact that substantial service will not be ascertained until five or possibly ten years after license grant — allows application mills and speculators to take advantage of the auction process, to the detriment of the public. Application mills can advertise that applicants need only provide minimal service within five (or ten) years, while speculators can apply for licenses and use the first five (or ten) years of their license term to extort concessions from those entities serious about providing service to the public. Once five (or ten) years have elapsed, the unscrupulous operators in question will be out of business, and the public will be left without service on the frequencies at issue. Obviously, this will reduce the level of competition in the messaging market and will defer efficient use of the spectrum, all to the detriment of the public.

The unsatisfactory nature of this standard is further illustrated by the fact that "substantial service" is so vague a term as to be virtually meaningless. This vagueness will lead to protracted litigation should the Commission seek to revoke an operator's license for failure to provide the requisite level of service. Such litigation will further delay use of the spectrum by those entities with legitimate business plans to provide messaging services to the public and misuse limited Commission resources.

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[28] PCIA Petition for Reconsideration, WT Dkt. No. 96-18, at 7-10 (filed Apr. 11, 1997); PCIA Comments, WT Dkt. No. 96-18, at 21-24 (filed Mar. 18, 1996); PCIA Reply Comments, WT Dkt. No. 96-18, at 21-22 (filed Apr. 2, 1996).

Therefore, instead of adopting a "substantial service" option, the Commission should retain its current buildout schedule,[29] *except* it should toll the beginning of the five-year buildout period until the date the last market area license in the original two MHz of narrowband PCS spectrum is issued. Retaining the existing construction timetables will help to promote efficient spectrum use and the provision of innovative new services to the public in a timely fashion. Developments in the narrowband PCS operating environment, however, warrant tolling the date from which the five-year construction benchmark is measured. Specifically, the equipment necessary to build out narrowband PCS systems (both infrastructure and subscriber) has not been as readily available from manufacturers as originally expected. Thus, deferring the beginning of the five-year buildout period until the last license is issued will place all narrowband PCS licensees in the two MHz allocated spectrum on a more equitable basis, taking into account the very real issues concerning equipment availability.

Thus, under PCIA's plan, five years after the grant of the last license for any market area: (1) nationwide licensees would be required to cover 750,000 square kilometers or serve 37.5 percent of the population of the United States; (2) regional licensees would be required to cover 150,000 square kilometers or serve 37.5 percent of the region's population; and (3) MTA licensees would be required to cover 75,000 square kilometers or serve 25 percent of the MTA population. The ten-year construction date would continue to be measured from the date any particular license was or is granted. Thus, ten years after the license grant date: (1) nationwide licensees would be required to cover 1.5 million square kilometers or serve 75 percent of the

[29] PCIA sees no need or justification to conform the narrowband PCS and paging construction schedules.

population of the United States; (2) regional licensees would be required to cover 300,000 square kilometers or serve 75 percent of the region's population; and (3) MTA licensees would be required to cover 150,000 square kilometers or serve 75 percent of the MTA population. These standards will allow licensees sufficient time to build out their networks, while helping to ensure that spectrum is used to meet public needs for narrowband services.

VI. THE PROPOSED AUCTION RULES SHOULD BE MODIFIED

In its *Further Notice*, the Commission "generally reaffirm[ed] the auction methodology adopted for narrowband PCS," but sought comment "on whether modifications should be made" to this design.[30] PCIA believes, consistent with its position in the market area paging docket,[31] that the Commission's auction rules for narrowband PCS should be modified to ensure the integrity of the auction process while maximizing the likelihood that the auction winner will provide service to the public in a rapid and efficient manner. This can best be accomplished by: (1) requiring upfront payments for each and every license sought by applicants; (2) providing applicants with full information about the identity of other bidders; (3) allowing for geographic partitioning with proper safeguards against abuses; (4) providing "safe harbors" from the anti-collusion restrictions; and (5) providing bidding credits and an installment payment option for designated entities, with appropriate safeguards against abuses.

First, all auction participants should be required to identify each frequency in each market on which they intend to bid, and to submit upfront payments calculated on a per market, per

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[30] *Further Notice*, ¶ 48.

[31] PCIA Comments, WT Dkt. No. 96-18, at 29-35 (filed March 18, 1996); PCIA Petition for Reconsideration, WT Dkt. No. 96-18, at 10-15, 23-24 (filed Apr. 11, 1997).

frequency basis. By requiring such market/frequency-based upfront payments, the Commission will help to weed out spectrum speculators and application mills. In order to implement this plan, the Commission must, however, set the upfront payment at a level that strikes the proper balance between discouraging speculators and not placing undue burdens on legitimate businesses (including new entrants and small businesses).

Second, the Commission should provide auction participants with complete information — including the identity of competing bidders — during the auction. In conducting the narrowband PCS auction, the Commission should follow its general policy of maximizing the information flow to bidders.[32] As previously noted by the Commission, the disclosure of ownership information "aids bidders by providing them with information about their auction competitors and alerting them to entities subject to [the] anti-collusion rules."[33]

According to auction theorists, an unfettered flow of information — including the identity of competing bidders — may "facilitate awarding licenses to those who value them most highly" and "improve the efficiency of license assignments."[34] Further, if apprised of information regarding the identity of competing bidders, licensees will be better able to develop plans for avoiding interference at the market area boundaries, thereby providing better service to mobile customers that pass through these boundary areas.

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[32] *Implementation of Section 309(j) of the Communications Act — Competitive Bidding*, 9 FCC Rcd 7245, 7252 (1994) ("*Competitive Bidding Second MO&O*").

[33] *Amendment of Part 1 of the Commission's Rules — Competitive Bidding Proceeding*, FCC 97-60, ¶ 51 (Feb. 28, 1997).

[34] *Competitive Bidding Second MO&O*, 9 FCC Rcd at 7252.

Third, PCIA generally supports the Commission's proposal to allow the geographic partitioning of narrowband PCS spectrum, provided safeguards are erected to prevent the abuse of the partitioning process. Geographic partitioning should be permitted because it will encourage the provision of geographically discrete and specialized narrowband services to the public. In addition, such partitioning will open the door for smaller entities to participate in the narrowband PCS industry.

It is important, however, to ensure that the partitioning rules are crafted to prohibit sham transactions designed to circumvent the Commission's construction requirements. Without such safeguards, an unscrupulous licensee might construct only a small part of its system, and then, as the construction deadline is about to expire, partition away the unconstructed areas in a pre-arranged, sham transaction. Such maneuvering would allow the partitioner to retain its license, despite its failure to build out its system consistent with applicable construction requirements.

The aforementioned gaming and deception could be prevented by holding the partitioner responsible for meeting the construction requirements for the entire license area. Thus, if the partitionee failed to construct its partitioned areas, the partitioner would forfeit its license. This addition to the partitioning rules will prevent sham transactions and ensure that partitioning is only used to provide increased service to the public, not to enrich the coffers of unethical operators.

Fourth, the Commission should establish a "safe harbor" in the anti-collusion rules for carriers engaged in acquisition negotiations or inter-carrier agreements. At present, parties participating in auctions are generally prohibited from "cooperating, collaborating, discussing, or

disclosing in any manner the substance of their bids or bidding strategies"[35] while auctions are underway. This rule should, however, be modified, because it is no longer consistent with the highly dynamic nature of the wireless telecommunications industry, where merger and consolidation negotiations are common. In addition, the anti-collusion rules prevent licensees from engaging in negotiations intended to prevent interference between adjacent systems or implement coordinated market area service arrangements for their customers. Because these discussions are intended to produce a better quality of service for the public, they should be encouraged, rather than prohibited by the Commission's rules.

Finally, PCIA supports the Commission's proposal to make bidding credits and installment payment plans "available to small businesses — including those owned by minorities and women,"[36] *provided* there are sufficient safeguards implemented to prevent the abuse of these preferences. At the outset of the competitive bidding proceeding, PCIA's predecessor, Telocator, supported the use of bidding credits and installment payments, since these preferences would encourage long term, significant participation by small businesses without creating market distortions.[37] PCIA continues to support the grant of bidding credits and installment payment opportunities for small businesses to assist such entities in participating in this industry.[38] There

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[35] 47 C.F.R. § 1.2105(c) (1996).

[36] *Further Notice*, ¶ 64.

[37] Telocator Comments in PP Docket 93-253 at 7-8 (Nov. 10, 1993).

[38] The use of bidding credits and installment payment plans for license auctions in encumbered spectrum, such as Part 22 and Part 90 paging, raises entirely different competitive considerations than those relevant in "clear" spectrum like narrowband PCS.

must, however, be safeguards against the abuse of these preferences by non-small businesses that seek to obtain licenses to which they are not legitimately entitled.

Specifically, "small business" should be defined in a way that is clear and easy to administer, thereby preventing undeserving entities from manipulating this definition. In addition, the Commission should require small businesses to produce significant upfront payments in order to ensure that these bidders are legitimate, adequately financed entities that will be capable of providing service to the public, rather than sham operations seeking solely to take advantage of the Commission's preferences.

VII. CONCLUSION

PCIA endorses the Commission's overarching goal in this proceeding — the creation of a set of rules governing narrowband PCS service that encourages providers to use spectrum efficiently while providing the public with a wide variety of narrowband services. This goal will be achieved, however, only if the Commission modifies its proposals to incorporate the rule and policy provisions outlined above.

Respectfully submitted,

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