result in the expedited delivery of SMR to rural areas that may not receive service in the near term.

2. Partitioning

a. Eligibility

142. Proposal. In the *Second Further Notice*, we proposed to allow rural telcos to obtain partitioned licenses in the lower 230 channels of the 800 MHz channel blocks and to expand partitioning in the upper 200 channels so that not only rural telcos but also incumbents and eligible SMR licensees generally could obtain partitioned licenses.[302] We tentatively concluded that extending the partitioning option will further the goal of Section 309(j) in the dissemination of licenses to a variety of licensees because small businesses will have the opportunity to acquire a license for a smaller area that they wish to serve while the remainder of the service area could be served by other providers.[303] We also sought comment as to the conditions under which upper 200 channel licensees should be permitted to partition their service areas to other SMR licensees.[304]

143. With respect to 900 MHz SMR licensees, AMTA argues that the Commission should modify the existing partitioning rule for 900 MHz SMR[305] to permit parties other than rural telephone companies (rural telcos) to acquire partitioned 900 MHz SMR licenses.[306] AMTA proposes that the Commission amend the 900 MHz SMR rules to allow any MTA licensee to partition its license at any time after receiving its authorization without imposition of a holding period.[307] AMTA contends that such an action would be responsive to the Congressional mandate of Section 257 of the Communications Act of 1934, as amended (Communications Act),[308] to eliminate entry barriers into the telecommunications market for small businesses and is consistent with the directive of Section 309(j) of the Communications Act[309] to promote economic opportunity for a wide variety of applicants, including small businesses, rural telcos, and businesses owned by minorities and women.[310] AMTA submits that modifying the 900 MHz SMR rules to allow open partitioning would serve the public interest because it would increase the availability of capital that could be used to construct and maintain 900 MHz systems which would lead to more rapid development of 900 MHz systems in non-urban areas.

144. Comments. The 800 MHz SMR commenters overwhelmingly support our proposal to allow EA licensees on the upper 200 channel block of 800 MHz SMR to partition their licenses and sell a

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302 *Second Further Notice*, 11 FCC Rcd at 1580, ¶ 266.

303 *Id.*

304 *Second Further Notice*, 11 FCC Rcd at 1581, ¶ 268.

305 *See* 47 C.F.R. § 90.813.

306 AMTA Petition at 6.

307 *Id.* at 4.

308 47 U.S.C. § 257.

309 47 U.S.C. § 309(j).

310 AMTA Petition at 3.

portion of their channel block to any incumbent or eligible SMR licensee.[311] Commenters also support our proposal to allow EA licensees on the lower 230 channels to partition.[312] Other commenters argue that partitioning will facilitate relocation and system build out, and allow incumbents to provide service to rural and smaller urban areas.[313] Finally, AMTA argues that partitioning allows the marketplace to determine optimal spectrum configuration and will result in additional participation in the auction.[314]

145. SMR WON argues that an 800 MHz SMR EA licensee should be required to demonstrate that it has cleared incumbents from the band, or has dedicated and set aside sufficient spectrum to clear all incumbents, before an EA licensee is allowed to partition to non-incumbents in the block. It would allow partitioning to other incumbents without such a showing, however.[315] On the other hand, some commenters contend that the auctions process will ensure that 800 MHz SMR spectrum will be fully utilized and thus restrictions are unnecessary.[316]

146. The majority of the 900 MHz commenters agree that MTA licensees should also be permitted to freely partition their licenses at any time after receiving their authorizations without the imposition of a holding period.[317] The commenters contend that allowing more open partitioning will provide 900 MHz SMR licensees with greater flexibility to use their spectrum to develop niche markets and innovative wireless service offerings, and is consistent with the Commission recent proposals to liberalize partitioning for 800 MHz SMR and broadband PCS licensees.[318]

147. Motorola argues that allowing more open partitioning will further the goal of Section 309(j) to disseminate licenses to a variety of licensees, as opposed to only rural telcos.[319] In addition, Motorola argues that allowing more open partitioning will facilitate the efficient use of spectrum, and eliminate market entry barriers for small businesses seeking to enter the 900 MHz SMR marketplace.[320] IC&E

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[311] AMTA Comments at 8; Fresno Comments at 3; Nextel Comments at 26; PCIA Comments at 23; PCI Comments at 2; SMR WON Comments at 29-30, 43-44 43.

[312] AMTA Comments at 8; Fresno Comments at 3; E.F. Johnson Comments at 3; Nextel Comments at 26; PCIA Comments at 23; PCI Comments at 2; SMR WON Comments at 29-30, 43-44.

[313] SMR WON Comments at 43; PCIA Comments at 2 - 3.

[314] AMTA Comments at 8; Fresno Comments at 8.

[315] SMR WON Comments at 43-44.

[316] AMTA Comments at 8; Sierra Comments at 1.

[317] CelSMeR Comments at 2; DW Communications, Inc., (DW) Comments at 1-2; Fisher Communications, Inc., (Fisher) Comments at 3; Geotek Communications, Inc., (Geotek) Comments at 2; Industrial Communications and Electronics, Inc. (IC&E) Comments at 3; Motorola, Inc., (Motorola) Comments at 3; Nextel Communications, Inc. (Nextel) Comments at 2-3; Personal Communications Industry Association (PCIA) Comments at 3; Pittencrief Communications, Inc. (Pittencrief) Comments at 2.

[318] Fisher Comments at 3; Geotek Comments at 2; Motorola Comments at 3; Nextel Comments at 2-3; PCIA Comments at 3; Pittencrief Comments at 2.

[319] Motorola Comments at 4.

[320] *Id.* at 5.

contends that the Commission's current MTA licensing rules for 900 MHz SMR has restricted licensees' ability to design service plans that are responsive to market forces and that licensees have been forced to conform their marketplace objectives to the Commission's requirements.[321]

148. DW agrees and notes that it is the licensee of an SMR system that operates exclusively in the New Orleans, Louisiana MTA.[322] DW states that, while it expects to meet its construction requirements, it is likely that little use will be made of its spectrum outside of the metropolitan New Orleans area in the foreseeable future.[323] Geotek agrees that its initial construction efforts will be on large urban markets within the MTAs where Geotek holds licenses.[324] Geotek contends that construction of SMR systems in the outlying areas of its MTAs may be delayed.[325] DW notes that it has attempted to negotiate with other two-way radio licensees in the MTA who would actively work together to market the SMR system, but only minimal interest has been shown since the other licensees are not permitted to own DW's spectrum under our existing restriction on partitioning.[326] Allowing more open partitioning would permit licensees like DW and Geotek to partition a portion of their MTAs to another entities which would result in a significant increase in the number of independent 900 MHz SMR operators, more timely provision of service and increased symmetry with other CMRS providers, such as broadband PCS and 800 MHz SMR, and faster delivery of service to areas that might not otherwise receive service in the near term.[327]

149. The Rural Telecommunications Group (RTG), a coalition of small telephone companies serving rural America, was the only commenter to oppose AMTA's proposal to allow more open partitioning for the 900 MHz SMR service.[328] RTG argues that detrimental effects would ensue if the Commission adopts AMTA's proposal.[329] Specifically, RTG argues that rural telcos' presence in the SMR market will decrease and that delivery of SMR service to rural America will be hindered.[330]

150. RTG argues that the Commission adopted its original 900 MHZ SMR partitioning arrangement in order to implement the directive of Section 309(j)(3)(A) of the Communications Act of 1934,[331] to promote the development of new technologies, products and services for the benefit of the

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[321] IC&E Comments at 3-4.

[322] DW Comments at 1.

[323] *Id.*

[324] Geotek Comments at 2.

[325] *Id.*

[326] DW Comments 1.

[327] DW Comments at 2; Geotek Comments at 2.

[328] RTG Comments at 1.

[329] *Id.* at 1-2.

[330] *Id.* at 2.

[331] 47 U.S.C. § 309(j)(3)(A).

public, including those residing in rural areas, without administrative or judicial delays.[332] RTG contends that the Commission recognized that their existing infrastructure makes rural telcos well-suited to introduce 900 MHz SMR service rapidly into their service areas.[333] RTG suggests that allowing more open partitioning will open the door for less-qualified entities to undertake the responsibility or ensuring that rural areas receive SMR services in a timely manner.[334] RTG argues that rural telcos will have the clear the advantage in speeding new service to rural areas since they will be able to relay on their existing infrastructure.[335]

151. RTG also argues that Section 309(j)(3)(B) mandates that the Commission promote economic opportunities for small businesses, rural telcos and minority- and female-owned businesses and that rural telcos have received the least amount of assistance from the Commission.[336] RTG argues that rural telcos are mischaracterized as financially superior to other entities and are excluded from various assistance schemes devised to enable undercapitalized companies to compete with larger, deep-pocketed companies.[337] For example, RTG argues that the Commission adopted bidding credits, installment payments and tax certificates for small businesses and woman and minorities but that rural telcos were not able to seek these special benefits unless they fortuitously met the eligibility criteria.[338] RTG argues that partitioning is the only preference that has been devised to ensure that rural telcos are afforded economic opportunities to participate in the provision of new and innovative services.[339] RTG argues that rural telcos were effectively shut out of the 900 MHz SMR auction due to the size of the areas being auctioned and the exorbitant prices being paid for licenses.[340] RTG believes that partitioning is the only method for rural telcos to provide their customers with SMR service.[341]

152. RTG also argues that the current partitioning rule for 900 MHz SMR requires that the partitioned license area conform to the wireline service area of a rural telco, thus ensuring that rural areas are served.[342] According to RTG, under AMTA's proposal, there would be no obligation to serve any particular area and entities might forego bringing service to rural areas altogether.[343] AMTA's lenient build-out requirements, RTG contends, would encourage the avoidance of speeding service to remote or

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[332] RTG Comments at 2.

[333] *Id.* at 3.

[334] *Id.*

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

[336] *Id.* at 6.

[337] *Id.*

[338] *Id.*

[339] *Id.* at 7.

[340] *Id.*

[341] *Id.*

[342] *Id.* at 4.

[343] *Id.*

hard-to-reach customers because the mandatory two-thirds population coverage can be most easily met by serving the largest established communities within the partitioned service area.[344] RTG argues that current or future negotiations between SMR licensees and rural telcos will be halted or protracted so that SMR licensees can "shop" their partitioning agreements to the highest bidder.[345] RTG contends that SMR licensees will be more interested in receiving a premium for their spectrum than in the type of service to be provided once the license is partitioned.[346] Protracted negotiations will also lead to delays in service to rural areas.[347]

153. AMTA responds that its proposal will increase opportunities for all entities interested in providing SMR service.[348] AMTA, Geotek and Nextel disagree with RTG that allowing more open partitioning in the 900 MHz SMR service will hinder the delivery of SMR service to rural areas or decrease the rural telco presence in the SMR market.[349] AMTA argues that expanding the partitioning provision to include all eligible applicants will open the door to numerous fully qualified wireless operators, including members of the incumbent SMR industry to provide SMR service to urban and rural communities.[350] Geotek contends that more open partitioning will promote faster delivery of SMR service to rural areas by increasing the number of service providers that are able to enter the SMR market.[351] Nextel argues that allowing more open partitioning does not contravene the Communications Act because rural telcos are not prohibited from participating in 900 MHz SMR partitioning and disaggregation and will have every opportunity to participate in the process and provide service to rural customers.[352]

154. AMTA submits that there is no basis in fact for RTG's assertion that rural telcos, with little or no experience in the wireless arena, are more qualified or inclined to provide high quality SMR service to subscribers than are the entities that have served a community for decades.[353] Nextel argues that rural telcos are not the only telecommunications companies with existing infrastructures in rural areas and that there are currently numerous SMR providers operating in rural areas.[354] Nextel contends that these providers are not less qualified to provide service, as RTG suggests, and that RTG's claims are nothing more than an attempt to limit any potential competition in the rural SMR marketplace.[355] Nextel states

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[344] *Id.*

[345] *Id.* at 5.

[346] *Id.*

[347] *Id.*

[348] AMTA Reply Comments at 7.

[349] AMTA Reply Comments at 7; Geotek Reply Comments at 1-2; Nextel Reply Comments at 3.

[350] AMTA Reply Comments at 7.

[351] Geotek Comments at 2.

[352] Nextel Reply Comments at 4.

[353] AMTA Reply Comments at 7.

[354] Nextel Reply Comments at 4.

[355] *Id.*

that extending partitioning to all licensees does not eliminate the rural telcos only remaining benefit and that rural telcos will continue to be eligible for partitioned 900 MHZ SMR licenses and they should be in a good position to obtain such licenses.[356]

155. AMTA concludes that RTG's claims that rural telcos and their customers will be harmed if parties other than rural telcos are permitted to purchase partitioned licenses are unsupported and unsupportable.[357] Geotek argues that, with open partitioning, service will be provided to the public in both urban and rural areas as soon as possible, rather than on a schedule with the urban market receiving priority.[358]

156. Discussion. We adopt our tentative conclusion and further extend partitioning to all incumbent licensees and eligible SMR licensees on all SMR channel blocks. We agree with commenters that partitioning will provide SMR licensees with increased flexibility and result in more efficient spectrum management.[359] In the broadband PCS proceeding, we eliminated the existing restriction that limited partitioning of broadband PCS licenses to only rural telcos.[360] We concluded that allowing more entities to acquire partitioned broadband PCS licenses would: "(1) remove potential barriers to entry thereby increasing competition in the PCS marketplace; (2) encourage parties to use PCS spectrum more efficiently; and (3) speed service to unserved and underserved areas."[361] We conclude that the very same important goals will be met by allowing more open partitioning in the SMR service. Eliminating the existing rural telco restriction on SMR partitioning will: (1) allow new entities, such as small businesses, to acquire SMR licenses and thus increase competition and foster the development of new technologies and services; (2) encourage existing SMR licensees to use their spectrum more efficiently; and (3) ensure the faster delivery of SMR service to rural areas. We also believe that allowing more flexible partitioning will provide an alternative to the relocation of incumbent licensees.

157. Under our rules, SMR licensees are required to meet performance requirements based on substantial service, which may be fullfilled by providing population-based coverage. As some of the 900 MHz commenters noted, these requirements encourage SMR licensees to initially focus their attention on the more populated, urban portions of their markets, in order to meet the construction requirements, while leaving the less-populated, rural areas unserved. With the present rural telco restriction in place, SMR licensees are not permitted to partition the more rural portions of the their markets to another entity, unless that entity is a qualifed rural telco. In those cases where no rural telco is present in the market or where the rural telco does not desire to provide SMR service, there may be a delay in the delivery of service to the rural portions of the MTA. Allowing SMR licensees to partition portions of their markets to other entities more interested in providing service to those niche areas not only allows those other entities an opportunity to enter the SMR marketplace but also increases the odds that the less populated, rural portions of markets receive higher quality SMR service. Therefore, we are eliminating the existing rural telco restriction on both 800 MHz and 900 MHz SMR partitioning.

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[356] *Id.* at 5.

[357] AMTA Reply Comments at 8.

[358] Geotek Reply Comments at 2.

[359] AMTA Comments at 8; Nextel Comments at 26; Sierra Comments at 1.

[360] *PCS Partitioning and Disaggregation Report and Order* at ¶¶ 13 - 18.

[361] *Id.* at ¶ 13.

158. We do not find that retaining the rural telco restriction will result in higher quality service to rural areas.[362] We find that allowing more open partitioning in the 900 MHz SMR service will mean that additional, highly qualified wireless operators, including incumbent SMR operators, will be permitted to provide 900 MHz SMR service which may result in better service and increased competition which may result in lower prices for service. We also do not find that allowing more open partitioning of 900 MHz SMR licenses is inconsistent with the mandate of Section 309(j)(3)(B) of the Communications Act[363] to ensure that licenses are disseminated among a wide variety of applicants including rural telcos. RTG argues that partitioning is the only preference that has been devised to ensure that rural telcos are afforded economic opportunities to participate in the provision of new and innovative services.[364] We disagree. Rural telcos are able to take advantage of the special provisions for small businesses adopted for the 900 MHz SMR auction. Furthermore, Sections 309(j)(3)(A), (B), and (D) of the Communications Act[365] direct the Commission to further the rapid deployment of new technologies for the benefit of the public including those residing in rural areas, to promote economic opportunity and competition, and to ensure the efficient use of spectrum. While encouraging rural telco participation in 900 MHz SMR service offerings is an important element in meeting these goals, Congress did not dictate that this should be the sole method of ensuring the rapid deployment of service in rural areas. Allowing more open partitioning will further the goals of Section 309(j)(3) by allowing 900 MHz SMR licensees to partition their licenses to multiple entities rather than to a limited number of rural telcos. In addition, we find that, because they possess the existing infrastructure and local marketing knowledge in rural areas, rural telcos will be able to compete with other parties to obtain partitioned 900 MHz SMR licenses.

159. We decline to adopt SMR WON's proposal to restrict non-incumbent 800 MHz SMR licensees from partitioning until they have relocated all incumbent licensees from their band. We agree with those 800 MHz commenters that believe that the auctions process obviates the need for restricting partitioning.[366] While we acknowledge SMR WON's concerns that partitioning could be used as a method for avoiding responsibility for relocation of incumbents, we believe that such a restriction would unfairly discourage partitioning without any corresponding public interest benefit. We note that partitionees will be permitted to acquire partitioned license areas from EA licensees but will not be permitted to operate on channels that were previously cleared by other EA licensees until they have satisfied the relocation reimbursement requirements under our rules.[367] EA licensees and partitionees are free to negotiate among themselves as to who will be responsible for paying the reimbursement costs, and we will require that parties seeking approval for a partitioning arrangement in the 800 MHz SMR service certify which party will be responsible for such reimbursement. We believe that such a certification is a more flexible approach to ensuring that partitioning is not used as a means to circumvent our reimbursement requirements.

b. Available License Area

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[362] *See* RTG Comments at 6.

[363] 47 U.S.C. § 309(j)(3)(B); *see* RTG Comments at 7.

[364] RTG Comments at 7.

[365] 47 U.S.C. § 309(j)(3)(A), (B) and (D).

[366] AMTA Comments at 8.

[367] *See* 47 C.F.R. § 90.699.

160. Proposal. Section 90.911 of our rules requires that 800 MHz SMR partitioned license areas in the upper 200 channel blocks conform to geopolitical boundaries such as county lines.[368] In the *Second Further Notice*, we sought comment on whether, in conjunction with our relaxation of the partitioning eligibility requirement in the 800 MHZ SMR service, EA licensees should be required to retain a specified portion of their service area, and, if so, what the appropriate amount should be.[369]

161. With respect to 900 MHz SMR, AMTA proposes that partitioned license areas be defined by established geopolitical boundaries, such as, but not limited to, county lines.[370] Where the desired service area does not conform to existing geopolitical boundaries, parties would be free to seek a waiver of the requirement.[371] MTA licensees would not be required to retain any particular minimum amount of their MTA authorization.[372]

162. Comments. The majority of the 800 MHz commenters argue that EA licensees should not be required to retain a portion of their market.[373] However, Genesee believes that EA licensees should keep the largest city as their service area and prefers adoption of a requirement that partitioned license areas conform to the licensees's 40 dBμV/m contour rather than to geographic county lines.[374]

163. As for 900 MHz SMR, CelSMeR agrees with AMTA that the Commission should require partitioning along established geopolitical boundaries.[375] CelSMeR argues that those parties whose plans do not conform to a geopolitical line may seek a waiver of the FCC's rules.[376] Motorola agrees that licensees should not be required to retain any set percentage of their license area after partitioning.[377]

164. Fisher disagrees and argues that 900 MHz SMR partitioning should not be limited to established geopolitical boundaries.[378] This delineation is too restrictive and a better approach would be to allow the parties to define the partitioned service area, as long as they file with their applications a detailed map of the proposed partition.[379] This would provide greater flexibility and would allow the

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368 *See* 47 C.F.R. § 90.911(d)(1).

369 *Second Further Notice*, 11 FCC Rcd at 1580, ¶ 268.

370 AMTA Petition at 4.

371 *Id.*

372 *Id.*

373 E.F. Johnson Comments at 3; PCI Comments at 3.

374 Genesee Comments at 2.

375 CelSMeR Comments at 2.

376 *Id.*

377 Motorola Comments at 6.

378 Fisher Comments at 4.

379 *Id.* at 4-5.

market, rather than regulation, to drive the build-out of 900 MHz SMR.[380]

165. Discussion. In the broadband PCS and WCS proceedings, we allowed partitioning along any service area defined by the partitioner and partitionee.[381] We found that, by providing such flexibility to licensees for determining partitioned broadband PCS license areas, we would permit the market to decide the most suitable services areas.[382] We find that the same rationale holds true in the SMR service. Restricting the partitioning of SMR licenses to geopolitical boundaries, as originally proposed in the *Second FNPRM* and by AMTA, may inhibit partitioning and may not allow licensees to respond to market demands for service. We find that allowing unrestricted partitioning of SMR licenses is preferable, as long as the parties submit information in their partial assignment applications that describes the partitioned license area.

166. We will require that applications seeking approval to partition an SMR license will be required to submit, as separate attachments to the partial assignment application, a description of the partitioned service area and, where applicable, a calculation of the population of the partitioned service area and licensed market. The partitioned service area must be defined by coordinate points at every 3 degrees along the partitioned service area agreed to by both parties, unless either (1) an FCC-recognized service area is utilized (*i.e.*, Major Trading Area, Basic Trading Area, Metropolitan Statistical Area, Rural Service or Economic Area) or (2) county lines are followed. Applicants need only define that portion of the partitioned service area that is not encompassed by an FCC-recognized service area or county line.[383] These geographical coordinates must be specified in degrees, minutes and seconds to the nearest second of latitude and longitude, and must be based upon the 1927 North American Datum (NAD27). Applicants may also supply geographical coordinates based on 1983 North American Datum (NAD83) in addition to those required based on NAD27. This coordinate data should be supplied as an attachment to the partial assignment application, and maps need not be supplied. In cases where an FCC recognized service area or county lines are being utilized, applicants need only list the specific area(s) (through use of FCC designations) or counties that make up the newly partitioned area.[384]

167. We note that this rule will also apply to incumbent 800 MHz SMR licensees seeking partial assignments of license. Incumbent licensees are currently licensed on a site-by-site basis and currently must seek a partial assignment of license under our existing rules if they desire to assign a portion of their licensed transmitter sites to another entity.[385] Under our new rules, incumbent 800 MHz SMR licensees must follow the same procedures as all other licensees and must include the necessary description of the "partitioned license area." For incumbent 800 MHz SMR licensees, the "partitioned license area" will mean that area encompassed by the protected service contours of all of the transmitter sites being assigned.

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[380] *Id.* at 5.

[381] *PCS Partitioning and Disaggregation Report and Order* at ¶ 24; *WCS Report and Order* at ¶¶ 97-98.

[382] *Id.*

[383] For example, if the partitioned service area consisted of five counties and three additional townships, the applicant must only define that portion of the partitioned service area comprised of the additional townships.

[384] For example, if a licensee desires to partition its license only for the service area needed by a rural telco, it will simply provide coordinate data points at each 3 degree data point extending from the center of the service area (*i.e*, at the 3 degree, 6 degree, 9 degree, 12 degree, etc. azimuth points with respect to true north).

[385] *See* 47 C.F.R. § 90.153(c).

3. Disaggregation

a. Eligibility

168. Proposal. In the *Second Further Notice*, we proposed to allow upper 200 channel 800 MHz SMR licensees to disaggregatee their spectrum to an independent entity.[386] We tentatively concluded that disaggregation would not only facilitate the coexistence of EA licensees with incumbents in the upper 200 channels but would also result in the most efficient use of the 800 MHz SMR spectrum.[387] We also sought comment as to the conditions under which upper 200 channel licensees should be permitted to disaggregate their spectrum.[388]

169. AMTA argues that, because 900 MHz SMR licensees are allowed to aggregate spectrum in order to promote system and service flexibility options, they should be allowed to disaggregate spectrum as well to achieve these goals.[389] AMTA argues that disaggregation would permit licensees to divest themselves of spectrum that may be more efficiently and profitably used by another entity or, conversely, to acquire additional increments of spectrum that their technology and customers may require.[390] AMTA contends that any MTA licensee should be permitted to assign portions of its licensed spectrum at any time after receiving an authorization.[391] AMTA suggests that no holding period be imposed prior to permitting spectrum disaggregation.[392]

170. Comments. The majority of the 800 MHz commenters support our proposal to permit EA licensees to disaggregate their spectrum blocks.[393] Nextel and PCI agree that disaggregation will lead to more efficient spectrum management, a broader range of SMR participants and services, and fuller use of the spectrum.[394] PCIA believes that disaggregation will help ensure the build-out of new systems while minimizing the need to relocate incumbent systems.[395] E.F. Johnson believes that disaggregation will

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[386] *Second Further Notice*, 11 FCC Rcd at 1579, ¶ 261.

[387] *Id.*

[388] *Second Further Notice* at ¶ 263.

[389] AMTA Petition at 5.

[390] *Id.*

[391] *Id.*

[392] *Id.*

[393] AMTA Comments at 8; E.F. Johnson Comments at 3; Fresno Comments at 3; Genesee Comments at 2; Nextel Comments at 26; PCIA Comments at 23, Pittencrief Comments at 2, SMR WON Comments at 42.

[394] Pittencrieff Comments at 2; Nextel Comments at 26; AMTA Comments at 8.

[395] PCIA Comments at 23.

provide local SMR operators with an opportunity to provide service to the EA operator.[396]

171. Fresno argues that by allowing small entities to pool their resources to bid for a channel block, with the agreement that they will disaggregate later, the Commission can expect to receive more vigorous bids from a large number of bidders in each market.[397] Fresno generally supports disaggregation, but argues that we should not allow the EA licensee to simply sublicense the spectrum to a new entity, and that we should require that the licensee transfer the disaggregated spectrum, through a partial assignment, in which the assignee would receive a new license.[398]

172. Similar to the argument it raised against partitioning, SMR WON argues that an EA licensee should be required to demonstrate that it has cleared incumbents from the band, or has dedicated and set aside sufficient spectrum to clear all incumbents, before an EA licensee is allowed to disaggregate spectrum to non-incumbents in the block. It would allow disaggregation to other incumbents without such a showing, however.[399] Some commenters contend that the auctions process will ensure that 800 MHz SMR spectrum will be fully utilized and thus restrictions are unnecessary.[400]

173. The majority of the 900 MHz commenters support AMTA's proposal to allow disaggregation of 900 MHz SMR spectrum.[401] The commenters agree that MTA licensees should be allowed to assign that portion of their spectrum they do not believe they will be able to use to entities eligible to become 900 MHz SMR licensees which would encourage more efficient use of spectrum.[402] Fisher argues that open disaggregation will foster competition in the wireless marketplace by providing more licenses and licensees per service area and will allow smaller entities, who were foreclosed from the auction, another opportunity to obtain a 900 MHz SMR license.[403]

174. Discussion. We conclude that all SMR licensees should be allowed to disaggregate portions of their spectrum to any party that is qualified for the spectrum's underlying channel block. We find that disaggregation will provide SMR licensees greater flexibility to manage their spectrum more efficiently and, in the 800 MHz band, will facilitate the coexistence of geographic area licensees and incumbents by allowing geographic licensees to subdivide their spectrum holdings and assign or transfer parts of their spectrum to other eligible entities or incumbents. We further find that disaggregation will increase competition by encouraging a broader range of SMR participants; foster a broader range of services offered by those participants as they seek niche markets and services; expedite the provision of SMR service to areas that may not otherwise receive CMRS service; and, allow the marketplace to determine

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[396] E.F. Johnson Comments at 3.

[397] Fresno Comments at 5.

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

[399] SMR WON Comments at 43-44.

[400] AMTA Comments at 8; Sierra Comments at 1.

[401] CelSMer Comments at 2; Fisher Comments at 3; Geotek Comments at 2; IC&E Comments at 4; Motorola Comments at 6; Nextel Comments at 2; PCIA Comments at 3; Pittencrief Comments at 2.

[402] CelSMeR Comments at 2; Motorola Comments at 6; Nextel Comments at 2-3; PCIA Comments at 3.

[403] Fisher Comments at 3.

who and by whom the spectrum will be used.[404] Moreover, allowing SMR disaggregation will help establish regulatory symmetry with similar services, such as PCS, as mandated by the 1993 Budget Act.[405] Once again, we find that allowing disaggregation will provide a less disruptive alternative for the relocation of incumbent licensees.

175. As we did with partitioning, we decline to adopt SMR WON's proposal to restrict non-incumbent 800 MHz SMR licensees' ability to disaggregate. We agree with commenters that conclude that the market should determine when and how much spectrum to disaggregate.

b. Amount of Spectrum to Disaggregate

176. Proposal. In the *Second Further Notice*, we sought comment on whether to require EA licensees to retain a specified portion of their spectrum block, and, if so, what minimum amount of spectrum should licensees be required to retain.[406]

177. AMTA argues that setting a minimum standard for disaggregation of 900 MHz SMR spectrum is too restrictive.[407] AMTA contends that some services may not require paired frequencies and that, to avoid an inadvertent bias in favor of certain technologies, 900 MHz SMR licensees should be allowed to disaggregate any portions of spectrum agreed to by the parties.[408]

178. In addition, AMTA states that 900 MHz SMR spectrum obtained through disaggregation should continue to be subject to the FCC's spectrum aggregation rules.[409]

179. Comments. Although the majority of the 800 MHz commenters support disaggregation, some argue that we should condition EA licensees' ability to disaggregate. Genesee argues that to discourage speculation, EA licensees should be required to retain a minimum of 10 channels.[410] SMR WON argues that we should not allow EA licensees to disaggregate less than 1 MHZ of spectrum.[411] Several commenters oppose such restrictions and they argue that we should not require the EA licensees to retain any particular portions of its channels.[412]

180. Fisher and Motorola agree with AMTA that there should be no minimum on the amount of

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[404] *See e.g.*, AMTA Comments at 8; Fresno Comments at 5; E.F. Johnson Comments at 3; Pittencrief Comments at 2-3.

[405] *See Budget Act* at 392.

[406] *Second Further Notice*, 11 FCC Rcd at 1579, ¶ 263.

[407] AMTA Petition at 5.

[408] *Id.* at 5-6.

[409] *Id.* at n.13.

[410] Genesee Comments at 2.

[411] SMR WON Comments at 42.

[412] E.F. Johnson Comments at 3.

900 MHz SMR spectrum that can be disaggregated.[413] Motorola argues that, by not selecting a minimum standard for disaggregation, the Commission will allow optimum use of the spectrum and the broadest array of technologies by licensees.[414]

181. CelSMeR disagrees with AMTA that there should be no minimum disaggregation standard for 900 MHz SMR.[415] CelSMeR argues that 900 MHz SMR licensees should not be allowed to disaggregate less than one channel-pair.[416] CelSMeR contends that the Commission should not allow an MTA licensee to disaggregate a mobile frequency without its associate base station.[417] Disaggregating a mobile frequency from its paired base frequency could lead to improper use of the mobile frequency as a base or other fixed station at a higher than authorized ERP which may cause interference to other licensees.[418] CelSMeR contends that allowing mobile frequencies to be used as base station frequencies, even at reduced power, would make it difficult for the Commission to prove that power levels were improperly increased.[419]

182. In its Reply Comments, AMTA argues the CelSMeR's concerns are premature.[420] AMTA states that parties acquiring disaggregated spectrum would be subject to all of the Commission's general technical standards and operating requirements.[421] The public interest would be better served by allowing the marketplace to decide the amount of spectrum to be disaggregated.[422] Should the Commission later discover that CelSMeR's fears were well-founded, it may always modify its rules to implement CelSMeR's proposal.[423]

183. Discussion. We agree with commenters that we should not limit the amount of SMR spectrum that can be disaggregated.[424] We find that the marketplace should decide the amount of SMR spectrum to be disaggregated and that there is no need to set a minimum disaggregation amount. As we did for broadband PCS and WCS, we seek to provide flexibility to the parties to decide the amount of

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413 Fisher Comments at 5; Motorola Comments at 7.

414 Motorola Comments at 7.

415 CelSMeR Comments at 2-3.

416 *Id.* at 2.

417 *Id.* at 2-3.

418 *Id.* at 3.

419 *Id.* at n.1.

420 AMTA Reply Comments at 3.

421 AMTA Reply Comments at 3 (*citing* 47 C.F.R. §§ 90.201 - 90.217 and 90.401 - 90.449).

422 *Id.* at 3-4.

423 AMTA Reply Comments at 4.

424 E. F. Johnson Comments at 3; Pittencrief Comments at 3.

spectrum they need.[425] This will permit more efficient use of spectrum and deployment of a wider range of service offerings. Requiring a minimum disaggregation amount for SMR may interfere with parties intend use of spectrum and may foreclose some parties from using disaggregation as a means of obtaining SMR spectrum to provide their unique service offerings. We note that parties acquiring disaggregated SMR spectrum will continue to be subject to all of our technical and operating requirements.

4. Construction, Coverage and Channel Usage Requirements

184. Proposal. Construction, coverage and channel usage requirements in the SMR service differ depending on whether the licensee is an incumbent SMR operator, a geographic area licensee (EA or MTA) and whether the licensee operates in the 800 MHz or 900 MHz band. Pursuant to new rules adopted in this *Second Report and Order*, incumbent 800 MHz SMR operators are subject to a one year construction deadline for each base station covered by their licenses. However, incumbent licensees are not subject to any additional coverage or channel usage requirements.

185. Geographic area licensees in both the 800 MHz and 900 MHz bands, on the other hand, are permitted five years to meet performance requirements based on substantial service. This five year period begins from the issuance of the geographic area license and applies to all stations within the spectrum block including any stations that may have been subject to an earlier authorization.[426] Geographic area licensees may meet this requirement by providing coverage to at least one-third of the population of their markets within three years of the grant of their licenses and coverage to at least two-thirds of the population within five years of the grant of their licenses.[427]

186. Finally, 800 MHz geographic area licensees on the upper 200 channels are required to construct 50 percent of the total channels included in their spectrum block in at least one location in their respective EA-based service area within three years of initial license grant and to retain such channel usage for the remainder of the five year construction period.[428] There is no requirement that 900 MHz or lower band 800 MHz geographic area licensees utilize a specific amount of spectrum in order to meet their performance requirements.[429]

187. In the *Second Further Notice*, we sought comment on whether geographic area 800 MHz SMR licensees be permitted to partition or disaggregate only after they have satisfied their respective performance requirements.[430]

188. AMTA proposes that an entity acquiring a partitioned area of a 900 MHz SMR MTA or disaggregated 900 MHz SMR spectrum from an MTA licensee be solely responsible for meeting the

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[425] *PCS Partitioning and Disaggregation Report and Order* at ¶ 49; *WCS Report and Order* at ¶ 99.

[426] *Id.*

[427] *See* 47 C.F.R. § 90.685(c).

[428] *See* 47 C.F.R. § 685(d).

[429] *See PCS Partitioning and Disaggregation Report and Order* at ¶¶ 61-63.

[430] *Second Further Notice*, 11 FCC Rcd at 1579-80, ¶¶ 263 & 268.

construction requirements for its partitioned area and for its disaggregated spectrum.[431] AMTA suggests that the original MTA licensee should have no rights or responsibilities to the partitioned area or disaggregated spectrum.[432] AMTA proposes that a partitionee or disaggregatee obtaining its license in the first three years of the MTA license grant would be subject to the same construction requirements as any other MTA licensee.[433] The partitionee or disaggregatee would be required to serve one third of its population by the end of the third year or submit a showing as to how it will provide substantial service to the area by the end of the first five years.[434] A partitionee or disaggregatee that obtained its license between the third and fifth years after the MTA license grant, would be acquiring a license for an MTA in which the coverage requirement had already been met. The new licensee would be required to meet the substantial service requirement for its partitioned license area or disaggregated spectrum at the end of the first five years of the original licensee's license term. Partitionees and disaggregatees obtaining authorizations after the first five years of a license term would have no further construction obligations.

189. Comments. With respect to 800 MHz SMR geographic area licensees, Nextel and PCI argue that the EA licensee should remain responsible for meeting its construction and coverage requirements for the entire EA and for all of the spectrum.[435] Nextel also argues that the EA license should revert back to the Commission if any partitionee causes the overall EA to fail to meet its coverage requirements.[436] Nextel contends that trying to enforce build-out requirements on a piecemeal basis would be complicated and burdensome and would result in a new SMR licensing morass.[437] PCI fears that if the EA licensee is not held responsible, the Commission might have to relicense "odd lot" geography and channel blocks.[438]

190. E.F. Johnson is against conditioning disaggregation on the completion of the EA licensees construction/build out requirements, however it believes that the EA licensee should ultimately be responsible for those requirements.[439]

191. As for 900 MHz geographic area licensees, CelSMeR, Fisher and PCI support AMTA's proposed construction requirements for partitionees and disaggregatees.[440] CelSMer contends that partitionees and disaggregatees should have the same obligation for their acquired area or spectrum as they would have had if the spectrum had been acquired at the auction.[441] Fisher agrees that the construction

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431 AMTA Petition at 6.

432 *Id.*

433 *Id.* at 7.

434 *Id.*

435 Nextel Comments at 26.

436 *Id.*

437 *Id.*

438 PCI Comments at 3; AMTA Comments at 9.

439 E.F. Johnson Comments at 3.

440 CelSMeR Comments at 4; Fisher Comments at 5-6; Pittencrief Comments at 4.

441 CelSMer Comments at 4-5.

obligations of the MTA licensee and partitionee/disaggregatee should not be linked because each party does not have control over the party's actions.[442]

192. Discussion. We agree that SMR licensees should not be able to use partitioning and disaggregation as a means of circumventing our performance requirements and that some version of these requirements should apply to parties obtaining licenses through these means. By adopting such requirements we seek to ensure that spectrum is used to the same degree that it would have been used had the partitioning or disaggregation transaction not taken place.

193. Therefore, we will adopt flexible coverage and channel usage requirements for partitioning and disaggregation in the 800 MHz and 900 MHz SMR services that are consistent with the underlying requirements in those services. We find that granting the parties flexibility to devise a scheme for meeting these requirements will increase the viability and value of partitioned licenses and disaggregated spectrum and will facilitate partitioning and disaggregation for the SMR service.

194. Incumbent Licensees. With respect to incumbent licensees, we believe that it would be inappropriate to subject entities that obtain partitioned licenses or disaggregated spectrum from incumbent SMR licensees to additional performance requirements when no such requirements currently exist for these licensees. However, to prevent incumbent licensees from using partitioning or disaggregation as a means of circumventing our one-year construction requirement, we will hold partitionees and disaggregatees to the original construction deadline(s) for each of the partitioned facilities they acquire. These deadlines may vary depending on when the facility was originally licensed.[443] In any case, a partitionee or disaggregatee that obtains a portion of an incumbent SMR licensees' facilities or spectrum with only a few months remaining before the expiration of the construction deadline, will be required to have these facilities constructed and providing "service to subscribers" by each individual construction deadline. Failure to meet the individual construction deadline for a specific facility will result in automatic termination of that facility's authorization. We believe that such a requirement is a fair balance between allowing incumbent SMR licensees the opportunity to utilize the helpful spectrum management tools of partitioning and disaggregation while ensuring continued compliance with our performance requirements.

195. Geographic Area Licensees - Partitioning. Because the coverage requirements differ for licensees in the 800 MHz and 900 MHz bands, we will adopt coverage requirements that are consistent with the licensees' underlying requirements. In the 900 MHz band and in the lower 230 channels of the 800 MHz band, licensees are required to provide "substantial service" to their markets within five years of the grant of their initial licensees. As such, we will permit parties seeking to partition licenses in those bands to meet one of the following performance requirments. Under the first option, the partitioner and partitionee can each agree to meet the "substantial service" requirement for their respective portions of the market. If a partitionee fails to meet the "substantial service" requirement for its portion of the market, the license for the partitioned area will automatically cancel without further Commission action. Under the second option, if the original geographic area licensee certifies that it has already met or will meet the "substantial service" requirement for the entire market by providing coverage to at least one-third of the population of the entire (pre-partitioned) market within three years of the grant of its license and at least two-thirds of the market population within five years, then the partitionee not be subject to performance

[442] Fisher Comments at 6.

[443] *See* 47 C.F.R. § 90.629.

requirements except for those necessary to obtain renewal.[444]

196. In the upper 200 channels of the 800 MHz band, licensees must meet specific coverage benchmarks by providing coverage to at least one-third of the population of their market within three years of the grant of their initial license and coverage to at least two-thirds of the population within five years. For licensees in the upper 200 channels of the 800 MHz band, we will adopt flexible coverage requirements similar to those we adopted in the broadband PCS proceeding. Under the first option, we will require that the partitionee certify that it will meet the same coverage requirement as the original licensee for its partitioned market. If the partitionee fails to meet its coverage requirement, the license for the partitioned area will automatically cancel without further Commission action. Under the second option, the original licensee certifies that it has already met or will meet its three-year coverage requirement and that it will meet the five-year construction requirement for the entire geographic area market. In that case, the partitionee will not be subject to performance requirements except for those necessary to obtain renewal.

197. Geographic Area Licensees - Disaggregation. Licensees in the upper 200 channels of the 800 MHz band are required to meet a channel usage requirement. Consistent with that rule, we will require that disaggregatees in the upper 200 channels of the 800 MHz band meet a channel usage requirement for the spectrum they acquire. However, consistent with our approach for partitioning and to provide flexibility to the parties to facilitate disaggregation in the upper 200 channels, we will permit the parties to negotiate among themselves the responsibility for meeting the channel usage requirement. Each party may agree to separately meet its channel usage requirement for its portion of the disaggregated spectrum or the original licensee may certify that is has or will meet the channel usage requirement for the entire spectrum block. Similar to our approach for partitioning, one party's failure to meet its agreed-to channel usage requirement shall result in that party's license automatically reverting to the Commission and shall not affect the other party's license.

198. There are no channel usage requirements in the 900 MHz SMR band or in the lower 230 channels of the 800 MHz band. We believe it would be inconsistent with our existing construction requirements to impose separate performance requirements on both the disaggregator and disaggregatee in those bands. However, we wish to ensure that parties do not use disaggregation to circumvent our underlying performance requirements. Therefore, we will adopt an approach similar to the one adopted for partitioning: we will retain the underlying "substantial service" requirement for the spectrum as a whole but allow either party to meet the requirements on its disaggregated portion. Therefore, a licensee in either the 900 MHz band or the lower 230 channels of the 800 MHz band that disaggregates a portion of its spectrum may elect to retain responsibility for meeting the "substantial service" requirement, or it may negotiate a transfer of this obligation to the disaggregatee. In either case, the rules ensure that the spectrum will be developed to at least the same degree that was required prior to disaggregation.

199. To ensure compliance with our rules, we will require that parties seeking Commission approval of disaggregation agreement in the 900 MHz band or the lower 230 channels of the 800 MHz band include a certification as to which party will be responsible for meeting the applicable "substantial service" requirements. Parties may also propose to share the responsibility for meeting the requirement. As part of our public interest review under Section 310(d), we will review each transaction to ensure that the party designated as responsible for meeting the performance requirements is *bona fide* and has the ability to meet these requirements. In the event that only one party agrees to take responsibility for meeting the performance requirement and later fails to do so, that party's license will be subject to

[444] *See* ¶ 32 *infra*.

forfeiture, but the other party's license will not be affected. Should both parties agree to share the responsibility for meeting the performance requirements and either party later fail to do so, both parties' licenses will be subject to forfeiture.

200. We note also that disaggregatees that already hold an SMR license or other CMRS license in the same geographic market will be subject to the same performance requirements as disaggregatees who do not hold other licenses for disaggregated spectrum. In addition, as we noted above, we will require that parties to partitioning and disaggregation agreements involving 800 MHz licensees certify in their applications which party will be responsible for relocating incumbent licensees located in the partitioned license area or the disaggregated spectrum block. The parties are free to negotiate among themselves which party will be responsible for incumbent relocation.

5. Matters Related to Designated Entity Licensees

201. Proposal. In the *Second Further Notice*, we sought comment as to the conditions under which 800 MHz licensees should be allowed to engage in partitioning and disaggregation. In addition, to the provisions discussed herein, we adopt the following conditions with respect to partitioning and disaggregation transactions involving designated entity licensees.

202. AMTA argues that the Commission's unjust enrichment provisions should apply in the 900 MHz partitioning and disaggregation contexts.[445] For example, if a licensee that received a bidding credit partitions or disaggregates to an entity that would not qualify for the bidding credit, then the licensee should be required to pay, on a *pro rata* basis, that portion of the bidding credit that is due under the rules.[446] Similarly, if the licensee was paying its winning bid through an installment payment plan and it partitioned or disaggregated to an entity that did not qualify for such a plan, the licensee would be required to pay, on a *pro rata* basis, the remaining unpaid principal and interest.[447]

203. AMTA recommends that unjust enrichment be prorated based upon the percentage of the population in the geographic area partitioned or the percentage of the spectrum disaggregated.[448] AMTA also offers two alternative methods for handling bidding credits and/or installment payments when the partitionee or disaggregatee would qualify for such provisions.[449] Under the first alternative, the Commission would simply extend the bidding credits and installment payment options to the eligible new licensee.[450] Under the second alternative, the partitionee or disaggregatee would pay the U.S. Treasury the full *pro rata* portion of the licensee's outstanding obligation at the time of transfer.[451] No installment payments would be extended to the partitionee or disaggregatee, even if they were to qualify for such

[445] AMTA Petition at 8.

[446] *Id.* at 8-9.

[447] *Id.*

[448] *Id.* at 10.

[449] *Id.* at 9.

[450] *Id.*

[451] *Id.*

payments.[452] However, the partitionee or disaggregatee would enjoy the benefit of the bidding credit, assuming they would have qualified for such credit, to offset the auctioned price of the license.[453]

204. Comments. CelSMeR and Pittencrief generally agree with AMTA's proposal for handling unjust enrichment in the 900 MHz SMR partitioning and disaggregation contexts and they favor AMTA's first alternative which would extend the same bidding credits and installment payments to qualifying partitionees and disaggregatees.[454] CelSMeR argues that if the partitionee or disaggregatee fails to make its required installment payment, the license should revert to the Commission and not the MTA licensee.[455]

205. PCIA disagrees with AMTA's recommendation that unjust enrichment payments be calculated on a proportional basis based upon the population of the partitioned area and the amount of spectrum disaggregated.[456] PCIA believes that such a procedure might slow down the application process and would create the opportunity for third parties that disagree with the calculations to file specious Petitions to Deny.[457] PCIA recommends that the parties be permitted to decide the proper proportional value of the partitioned license area or spectrum disaggregated.[458] The Commission would only intervene where there is a clear misjudgment of proportional value.[459]

206. AMTA responds by clarifying that its proposal was not meant to set the contract price of spectrum or geographic area.[460] Its methods for calculating the proportional value of a license were meant to be used solely for the purpose of calculating unjust enrichment payments.[461] AMTA argues that it is not clear how PCIA's approach would be less susceptible to "specious Petitions to Deny" than the approach it recommended.[462]

207. Discussion. Geographic area licensees in both the 800 MHz and 900 MHz bands that qualify as a "small business" (otherwise referred to generally as "designated entity" licensees) may receive

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[452] *Id.*

[453] *Id.*

[454] CelSMeR Comments at 6; Pittencrief Comments at 4.

[455] CelSMeR Comments at 6.

[456] PCIA Comments at 4.

[457] *Id.*

[458] *Id.*

[459] *Id.*

[460] AMTA Reply Comments at 5.

[461] *Id.*

[462] *Id.* at 5-6.

a bidding credit to reduce the amount of their winning auction bid.[463] While 900 MHz licensees may repay their winning auction bid pursuant to installment payments, pursuant to our *Memorandum Opinion and Order* released today, installment payments for 800 MHz licensees in the upper 200 channels have been eliminated and we decline to adopt such a provision for the lower 230 channels.[464] Therefore, we must only concern ourselves with the question of installment payments with respect to 900 MHz licensees.

208. Whenever an geographic area 800 MHz or 900 MHz SMR licensee, that received a bidding credit at auction, transfers its entire license to an entity that would not have qualified for such a bidding credit or would have qualified for a lower bidding credit, the geographic area licensee is required to repay some or all of its bidding credit.[465] If the transfer occurs in the first two years, 100 percent of the bidding credit must be repaid; if it occurs in year three, 75 percent; in year four, 50 percent; and in year five, 25 percent.[466] After the fifth year, no unjust enrichment penalty is imposed.[467]

209. Similarly, if a 900 MHz geographic area licensee, that is paying its winning bid through installment payments, transfers its license to entire an entity that would not have qualified for such installment payments or, in the case of the upper 200 channels, for a less favorable installment payment plan, the geographic area licensee must make full payment of the remaining unpaid principal and interest accrued through the date of assignment or transfer.[468]

210. We conclude that the above-outlined unjust enrichment requirements shall apply if licensee, that received one of these special small business benefits, partitions or disaggregates to an entity that would not qualify for the benefit. We will follow the approach adopted in both the broadband PCS and WCS proceedings and apply all such unjust enrichment requirements on a *pro rata* basis using population to calculate the relative value of the partitioned area and amount of spectrum disaggregated to calculate the relative value of the disaggregated spectrum.[469] We disagree with PCIA that these measures will slow the assignment process or encourage the filing of frivilous petitions to deny. We find that such measures will provide an objective method for calculating the relative values of partitioned areas and disaggregated spectrum. We note that population will be calculated based upon the latest census data.[470]

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[463] *See* 47 C.F.R. § 90.910(b) and 90.912 (b) & (c). Entities with average gross revenues of not more than $3 million for the preceding three years may receive a 35 percent bidding credit. *See* 47 C.F.R. § 90.910(b). Entities with average gross revenues of not more than $15 million for the preceding three years may receive a 25 percent bidding credit. *Id.*

[464] *See* 47 C.F.R. §§ 90.910(a)(1) & (2). There are two levels of installment payments available to small business EA licensees in the upper 200 channels while only one level of installment payments is available to small business EA licensees in the lower 230 channels.

[465] *See* 47 C.F.R. § 90.910(d).

[466] *Id.*

[467] *Id.*

[468] *See* 47 C.F.R. § 90.910(c). A similar rule has been adopted for the lower 230 channels, however, only one level of installment payments in available to EA licensees in the lower 230 channels.

[469] *See PCS Partitioning and Disaggregation Report and Order* at ¶¶ 33 & 55; *WCS Report and Order* at ¶ 101.

[470] Parties may use the latest census data when it is available.

211. With respect to installment payments, we will follow the procedures established in the broadband PCS proceeding and require that a 900 MHz SMR geographic area licensee, making installment payments, and seeking to partition or disaggregate to an entity that does not meet the applicable installment payment eligibility standards, make a payment of principal and interest calculated on a proportional basis as set forth above.[471] If a geographic area licensee making installment payments, partitions or disaggregates to an entity that would qualify for less favorable installment payments, we will require the licensee to reimburse the government for the difference between the installment payment paid by the licensee and the installment payments for which the partitionee or disaggregatee is eligible calculated on a proportional basis as set forth above.[472]

212. We will separate the payment obligations using the same procedures adopted for broadband PCS.[473] When a 900 MHz SMR geographic area licensee with installment payments partitions or disaggregates to a party that would not qualify for installment payments under our rules or to an entity that does not desire to pay for its share of the license with installment payments, we will require, as a condition of grant of the partial assignment application, that the partitionee/disaggregatee pay its entire *pro rata* amount within 30 days of Public Notice conditionally granting the partial assignment application. The partitioner or disaggregator will receive new financing documents (promissory note and security agreement) with a revised payment obligation, based on the remaining amount of time on the original installment payment schedule. A default on an obligation will only affect that portion of the market area held by the defaulting party.[474]

213. Where both parties to the 900 MHz SMR partitioning or disaggregation arrangement qualify for installment payments under our rules, we will again follow the procedures established in the broadband PCS proceeding and permit the partitionee/disaggregatee to make installment payments on its portion of the remaining government obligation.[475] Partitionees/disaggregatees are free, however, to make a lump sum payment of all or some of their *pro rata* portion of the remaining government obligation within 30 days of the Public Notice conditionally granting the partial assignment application. Should a partitionee/disaggregatee choose to make installment payments, we will require, as a condition to approval of the partial assignment application, that both parties execute financing documents (promissory note and security agreement) agreeing to pay the U.S. Treasury their *pro rata* portion of the balance due (including accrued and unpaid interest on the date the partial assignment application is filed) based upon the installment payment terms for which they would qualify. Each party will receive a license for its portion

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[471] *See PCS Partitioning and Disaggregation Report and Order* at ¶ 35.

[472] *See* 47 C.F.R. § 90.910(c).

[473] *See PCS Partitioning and Disaggregation Report and Order* at ¶ 36.

[474] For example, if an 900 MHz SMR licensee owes $1,000,000 in interest and principal for a market area and, after four years of payments, has paid $400,000 of the obligation and is partitioning a portion of its license area which represented 25 percent of the population of the entire license area (calculated at the time of partitioning) or is disaggregating 25 percent of its spectrum to an entity that would not qualify for installment payments, then 25 percent of the remaining $600,000 government obligation ($150,000) must be paid by the partitionee or disaggregatee to the U.S. Treasury. The partitioner or disaggregator's installment payments to the U.S. Treasury would be reduced by that amount and it would receive a new promissory note reflecting the reduced amount due. The original interest rate, calculated at the time the initial license was issued to the licensee, would continue to be applied to the licensee's remaining installment payments.

[475] *See PCS Partitioning and Disaggregation Report and Order* at ¶ 36.

of the market area and each party's financing documents will provide that a default on its obligation would only affect their portion of the market area. These payments to the U.S. Treasury are required notwithstanding any additional terms and conditions agreed to between or among the parties.[476]

6. Related Matters

214. We asked commenters in the *Second Further Notice* to discuss the conditions by which partitioning and disaggregation should be allowed for 800 MHz licensees. In addition, AMTA raised related matters in its Petition. We adopt the following rules with respect to the above-outlined matters similar to those we have adopted for the broadband PCS service.

a. Combined Partitioning and Disaggregation

215. Proposal. AMTA recommends that 900 MHz SMR licensees be permitted to enter into agreements that propose combined partitioning and disaggregation.[477] AMTA argues that allowing combined partitioning and disaggregation will allow entities to enter or increase their presence in the market or to expand or enhance service offerings.[478]

216. Comments. CelSMeR, Fisher and Motorola agree that combined partitioning and disaggregation should be allowed.[479] For example, CelSMer states, MTA licensee A could acquire a portion of an adjacent service area from MTA licensee B, thereby giving MTA licensee A an expanded service area.[480]

217. Discussion. In the broadband PCS proceeding, we found that allowing entities to propose combined partitioning and disaggregation transactions would provide added flexibility and would facilitate such arrangements.[481] We believe the same rationale would apply to partitioning and disaggregation in the SMR service. Therefore, we will allow licensees to propose combined partitioning and disaggregation transactions. We believe that the goals of providing competitive serve offering, encouraging new market entrants, and ensuring quality service to the public will be advanced by allowing such combined

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[476] For example, if an 900 MHZ SMR licensee owes $1,000,000 in interest (at 7% calculated at the time of licensing) and principal and, after four years of payments, has paid $400,000 of the obligation and is partitioning a portion of its license area which represented 25 percent of the population of the entire license area (calculated at the time of partitioning) or disaggregating 25 percent of its spectrum to an entity that would qualify for installment payments, then we would apportion the remaining $600,000 balance owed the U.S. Treasury between the licensee and partitionee/disaggregatee. The licensee would be required to continue making installment payments on its 75 percent of the balance owed ($450,000) and the partitionee/disaggregatee would be required to make installment payments on its 25 percent of the balance owed ($150,000). Each party would receive financing documents for its share of the remaining balance with an interest rate equal to the interest rate calculated at the time of the issuance of the initial license in the market.

[477] *Id.* at 10.

[478] *Id.*

[479] CelSMeR Comments at 6-7; Fisher Comments at 5; Motorola Comments at 7.

[480] CelSMeR Comments at 7.

[481] *PCS Partitioning and Disaggregation Report and Order* at ¶ 66.

transactions. We further conclude that in the event that there is a conflict in the application of the partitioning and disaggregation rules, the partitioning rules should prevail. For the purpose of applying our unjust enrichment requirements and/of for calculating obligations under installment payment plans, when a combined 900 MHz SMR partitioning and disaggregation is proposed, we well use a combination of both population of the partitioned area and amount of spectrum disaggregated to make these *pro rata* calculations.[482]

b. License Term and Renewal Expectancy

218. Proposal. In the *CMRS Third Report and Order*, we determined that Part 90 licensees that are reclassified as CMRS shall have a ten-year license term and shall be afforded a renewal expectancy if they can demonstrate that they have provided "substantial service" during their past license terms and they have substantially complied with the Commission's rules, policies and the Communications Act.[483] We have adopted similar ten-year license term and renewal expectancy for 800 MHz and 900 MHz geographic area licensees.[484] AMTA suggests that the 900 MHz SMR partitionee or disaggregatee receive a license term that is coterminous with the original licensee's license term and that it receive a renewal expectancy similar to that granted to MTA licensees.[485]

219. Comments. CelSMeR and PCI agree that partitionees and disaggregatees should receive a license with an expiration date that is the same as the original MTA licensee and that partitionees and disaggregatees should have the same renewal expectancy rights as MTA licensees.[486]

220. Discussion. In the broadband PCS proceeding, we concluded that entities acquiring a license through partitioning and disaggregation should hold their license for the remainder of the original licensee's license term.[487] We found that this approach was consistent with the approach we had adopted for the Multipoint Distribution Service and was the easiest to administer.[488] We found that allowing licensees to "re-start" the license term from the date of the grant of the partial assignment of license

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[482] For example, if a 900 MHz SMR licensee owes $1,000,000 in interest (at 7% calculated at the time of licensing) and principal and, after four years of payments, has paid $400,000 of the obligation and is partitioning a portion of its license area which represented 25 percent of the population of the entire license area (calculated at the time of partitioning) and disaggregating 10 percent of its spectrum to an entity that would qualify for installment payments, then we would apportion the remaining $600,000 balance owed the U.S. Treasury between the licensee and partitionee/disaggregatee. We would use a combined percentage of 17.5% (.25 + .10 /2 = .175) when calculating the percentage of the license being sold. The licensee would be required to continue making installment payments on its 82.5 percent of the balance owed ($495,000) and the partitionee/disaggregatee would be required to make installment payments on its 17.5 percent of the balance owed ($105,000). Each party would receive financing documents for its share of the remaining balance with an interest rate equal to the interest rate calculated at the time of the issuance of the initial license in the market.

[483] *See CMRS Third Report and Order* at ¶ 386.

[484] *See 800 MHz Report and Order*, 11 FCC Rcd at 1502-3, ¶ 64; 47 C.F.R. § 90.665(a).

[485] AMTA Petition at 11.

[486] CelSMeR Comments at 4; Pittencrief Comments at 4.

[487] *PCS Partitioning and Disaggregation Report and Order* at ¶¶ 73 - 78.

[488] *Id.* at ¶ 76.

application could invite parties to circumvent our license term rules and unnecessarily delay service to the affected areas.[489]

221. We find the same to be true with respect to the SMR service. Limiting partitionees and disaggregatees in the SMR service to the remainder of the original licensee's license term (whether it be five years for incumbent licensees or ten years for geographic area licensees) will ensure that there will be the maximum incentive for parties to pursue available spectrum as quickly as practicable, thus expediting delivery of service to the public.[490]

222. We will also adopt renewal expectancy provisions for SMR partitionees and disaggregatees that obtain their licenses from geographic area licensees similar to those adopted in the broadband PCS proceeding.[491] Partitionees and disaggregatees obtaining license areas or spectrum from geographic area licensees may earn a renewal expectancy on the same basis as other geographic area licensees.

c. Licensing

223. Proposal. We proposed, in the *Second Further Notice*, that entities be permitted to acquire partitioned 800 MHz SMR licenses or disaggregated spectrum in either of two ways: (1) by forming a bidding consortia participate in auctions and then partition the licenses or disaggregate the spectrum won among consortia participants or (2) by acquiring partitioned 800 MHz SMR licenses or disaggregated spectrum from other licensees through private negotiation and agreement either before or after auction.[492] Entities would be required to file a long form application seeking Commission approval for their partitioning and disaggregation agreements.[493]

224. AMTA recommends that the Commission follow partial assignment of license procedures when reviewing applications for 900 MHz SMR partitioning and disaggregation.[494] The parties would file an FCC Form 490, signed by both parties, and the partitionee/disaggregatee would file an FCC Form 430, unless it already has one on file with the Commission.[495] The partitionee/disaggregatee would file an FCC Form 600 to receive authorization to operate in the partitioned license area or with the disaggregated spectrum.[496] All of these forms would be filed as one package under cover of the FCC Form 490.[497]

225. Comments. CelSMeR, Fisher and PCI agree with AMTA's proposed licensing scheme for

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[489] *Id.* at ¶ 77.

[490] *Id.*

[491] *Id.* at ¶ 76.

[492] *Id.* at ¶ 267.

[493] *Id.*

[494] *Id.* at 12.

[495] *Id.*

[496] *Id.*

[497] *Id.*

900 MHz SMR partitioning and disaggregation.[498] Fisher contends that, in order to keep the administrative burden on carriers as simple and streamlined as possible, the FCC should refrain from adopting any additional requirements.[499]

226. Discussion. In order to provide added flexibility, we will not adopt the procedures set forth in the *Second Further Notice* and, instead, adopt procedures similar to those proposed by AMTA and those devised for broadband PCS partitioning and disaggregation. We will require that parties seeking approval for an SMR partitioning or disaggregation transaction follow the existing partial assignment procedures for the SMR service.[500] Such applications will be placed on Public Notice and will be subject to petitions to deny.[501] The licensee will be required to file an FCC Form 490 that is signed by both the licensee and the qualifying entity. The qualifying entity will also be required to file an FCC Form 430 unless a current FCC Form 430 is already on file with the Commission. An FCC Form 600 must be filed by the qualifying entity to receive authorization to operate in the market area being partitioned or for the disaggregate spectrum and to modify the existing license of the qualifying entity to include the new/additional market area being partitioned or the spectrum being disaggregated. Any requests for a partitioned license or disaggregated spectrum must contain the FCC Forms 490, 430, and 600 and be filed as one package under cover of the FCC Form 490.

227. We note that the 45 MHz CMRS spectrum cap contained in Section 20.6 of the rules applies to partitioned license areas and disaggregated spectrum in the SMR service. In the context of partitioning, we will determine compliance with the spectrum cap based on the post-partitioning populations of each licensees' partitioned market. This means that neither the partitioner nor the partitionee may count the population in the other's party's portion of the market in determining its own compliance with the spectrum cap. Furthermore, by signing FCC Forms 490 and 600, the parties will certify that grant of the partial assignment application would not cause either party to be in violation of the spectrum aggregation limit contained in Section 20.6 of the rules.

F. Competitive Bidding Issues of Lower 80 and General Category Channels

1. Auction of Lower 80 and General Category Channels

228. Background. In the *Second Further Notice*, we proposed to use competitive bidding to select among mutually exclusive applications for the lower 80 channels of the 800 MHz SMR spectrum. We noted that because the Lower 80 channels are a subset of the 800 MHz SMR service, they are auctionable. In addition, we sought comment on the adoption of equivalent auction procedures for the General Category channels, which we previously determined would be licensed exclusively for SMR use. We tentatively concluded that in keeping with our approach for other 800 MHz SMR spectrum, competitive bidding procedures again would be appropriate to select from among mutually exclusive initial applications. Finally, we sought comment on our tentative conclusion that a large number of applicants will file mutually exclusive applications for General Category channels, that all potential conflicts among General Category applicants will not be eliminated by our proposed geographic licensing scheme, and that therefore competitive bidding would be necessary to select from among competing licenses for these

[498] CelSMer Comments at 3-4; Fisher Comments at 6; Pittencrief Comments at 4.

[499] Fisher Comments at 6.

[500] *See* 47 C.F.R. § 90.153(c).

[501] *See* 47 C.F.R. §§ 24.830 & 24.839.