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

In the Matter of)	
)	
Revision of Part 22 and Part 90)	WT Docket No. 96-18
of the Commission's Rules to Facilitate)	
Future Development of Paging Systems)	
)	
Implementation of Section 309(j))	PR Docket No. 93-253
of the Communications Act --)	
Competitive Bidding)	

**MEMORANDUM OPINION AND ORDER ON RECONSIDERATION
AND THIRD REPORT AND ORDER**

Adopted: May 13, 1999

Released: May 24, 1999

By the Commission:

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I. INTRODUCTION

1. On February 24, 1997, the Commission released the *Second Report and Order and Further Notice of Proposed Rulemaking* in this proceeding, adopting rules governing geographic area licensing of Common Carrier Paging (CCP) and exclusive 929 MHz Private Carrier Paging (PCP), and procedures for auctioning mutually exclusive applications for these licenses.¹ This *Memorandum Opinion and Order on Reconsideration and Third Report and Order* makes certain modifications to the rules adopted in the *Second Report and Order and Further Notice* and adopts rules that permit partitioning of nationwide licenses and disaggregation of paging spectrum. Consistent with the conclusions reached in the *Part 1 Third Report and Order and Second Further Notice*,² it also eliminates installment payment plans for eligible small businesses participating in paging auctions, and increases the level of bidding credits for such entities. Additionally, this *Memorandum Opinion and Order on Reconsideration and Third Report and Order* amends our rules to permit auction winners to make their final payments within ten (10) business days after the applicable deadline, provided that they also pay a late fee of five (5) percent of the amount due. This *Memorandum Opinion and Order on Reconsideration and Third Report and Order* advances the Commission's policy goals of facilitating competition in the wireless market by encouraging a more diverse array of entities, including small businesses and rural telephone companies, to offer paging services to the public. We believe that the actions we take today further our common-sense objectives of streamlining regulations, promoting technical and regulatory parity among commercial mobile radio services (CMRS), and fostering competition in the provision of paging services to the public.

II. EXECUTIVE SUMMARY

2. In response to our *Second Report and Order*, twenty-nine parties filed petitions for reconsideration, partial reconsideration, or clarification; twenty parties filed oppositions to or comments on the petitions; and thirteen parties filed reply comments. Ten parties filed comments and eight filed reply comments in response to the *Further Notice*.³ After considering the record in this proceeding, we make certain clarifications and adopt new rules, as follows:

¹ Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, *Second Report and Order and Further Notice of Proposed Rulemaking*, 12 FCC Rcd 2732 (1997) (*Second Report and Order and Further Notice*). We use the designation "PCP" for 929 MHz licenses in this Order because we have done so throughout this proceeding. We have historically designated 929 MHz frequencies as PCP because they were originally licensed under Part 90 of our rules, but 929 MHz frequencies are now licensed under Part 22 of our rules.

² Amendment of Part 1 of the Commission's Rules—Competitive Bidding Procedures, WT Docket No. 97-82, Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, 4660-4685 MHz, ET Docket No. 94-32, *Third Report and Order and Second Further Notice of Proposed Rulemaking*, 13 FCC Rcd 374 (1998) (*Part 1 Third Report and Order and Second Further Notice*) (modified by *Erratum*, DA 98-419 (Mar. 2, 1998)).

³ Appendix A provides the full and abbreviated names of the parties filing petitions, oppositions, comments, and reply comments. In addition to these filings, AirTouch filed a Motion for Leave to Respond and Response to Reply to Opposition, and American Paging, Inc. filed an Opposition to AirTouch's Motion for Leave to Respond and Response to Reply Opposition.

Order on Reconsideration

- We affirm our decision in the *Second Report and Order* to dismiss all mutually exclusive paging applications and all paging applications filed after July 31, 1996. We also deny an application for review and a number of petitions for reconsideration of the Wireless Telecommunications Bureau's Order dismissing these applications.
- We will replace the Rand McNally Major Trading Areas (MTAs) with Major Economic Areas (MEAs) for geographic area licensing of the 929 and 931 MHz bands. Because MEAs are composed of Economic Areas (EAs) and EAs will be used to license the lower paging bands (35-36 MHz, 43-44 MHz, 152-159 MHz, and 454-460 MHz), this will enable licensees operating paging systems in both the 929-931 MHz bands and the lower paging bands to operate both systems more efficiently. We affirm our decision to award licenses for EAs, as opposed to Basic Trading Areas (BTAs), for paging systems operating in the lower paging bands. We also add three EA-like service areas for Guam and the Northern Mariana Islands, Puerto Rico and the U.S. Virgin Islands, and American Samoa.
- We decline to limit eligibility for paging auctions to incumbent paging licensees or to exempt incumbents from having to participate in the auction to secure spectrum.
- In the *Second Report and Order*, we decided that spectrum recovered by the Commission from a non-geographic area incumbent licensee would automatically revert to the geographic area licensee to prevent the warehousing of spectrum and to encourage geographic area licensees' systems build-out. In this Order, we clarify that spectrum will automatically revert to the geographic area licensee in all instances where a non-geographic area incumbent licensee permanently discontinues service.
- We clarify our rules to state that when a system-wide licensee allows an area within its system to revert to the geographic area licensee, the system-wide license shall remain intact; however, the parameters of the system-wide license shall be amended to the demarcation of the remaining contiguous interference contours. We will also allow system-wide licensees to maintain separate licenses for any remote, stand-alone transmitters, or to include remote, stand-alone sites within the system-wide license.
- We clarify that non-exclusive incumbent licensees on the thirty-five exclusive 929 MHz channels will continue operating under the same arrangements established with the exclusive incumbent licensees and other non-exclusive incumbent licensees prior to the adoption of the *Second Report and Order and Further Notice*. Additionally, MEA, EA, and nationwide geographic area licensees are afforded the right to share with non-exclusive incumbent licensees on a non-interfering shared basis.
- Providing interference protection from geographic area licensees to fixed stations, including control link operations in the lower bands, is outside the scope of this proceeding, and incumbent mobile telephone service providers will not be permitted to obtain site licenses on a secondary basis.
- We affirm our decision in the *Second Report and Order* to not impose a limit or "cap" on the number of licensees for each of the shared channels.

- We clarify the procedures for authorization on certain frequencies requiring coordination with Canada.
- In the *Second Report and Order*, we eliminated the Part 90 height and power limitations on 929 MHz stations and increased the maximum permitted effective radiated power (ERP) for 929 MHz stations to 3500 watts. We clarify that we will not require incumbent 929 MHz licensees to file a modification application to increase the ERP for their base stations as long as these licensees do not increase their current composite interference contours.
- We provide guidance on the factors we will consider in assessing whether licensees have met the "substantial service" construction option. We also amend Section 22.503(k) of our rules to provide that MEA and EA licensees that fail to meet their coverage requirements will be permitted to retain licenses only for those facilities authorized, constructed, and operating at the time the geographic area license was granted.
- With respect to the competitive bidding rules and policies adopted previously, we decline to:
 - modify our hybrid simultaneous/license-by-license stopping rule;
 - limit the Bureau's discretion to announce precise information, such as bidder identities, that will be provided to bidders during the auction;
 - require that bidders specify each individual license on which they will bid and submit an upfront payment for each license;
 - permit bid withdrawal without monetary liability; or
 - modify our anti-collusion rule to provide safe harbors for certain business discussions during the auction.
- We modify or clarify other aspects of our competitive bidding rules. Specifically, we eliminate installment payment plans for the paging service; increase the levels of bidding credits available to eligible small businesses; and also permit applicants to make their final payments within ten (10) business days after the payment deadline, subject to a late fee of five (5) percent of the amount due. We also clarify the controlling interest standard used to determine eligibility for small business status by providing a definition of "controlling interest."

Third Report and Order

- We conclude that it is best to defer any decision on whether to impose minimum coverage requirements on paging licensees holding nationwide geographic area licenses until we resolve similar issues raised in the *Narrowband PCS Further Notice*. Nationwide geographic area paging licensees will be permitted to partition their service areas to any eligible party along any boundaries the parties choose and disaggregate their spectrum by any method they choose. We will also defer any decision on whether to impose minimum coverage requirements on the parties to a partitioning or disaggregation agreement involving nationwide geographic area licenses until we decide whether to impose such requirements on nationwide licensees generally.
- Partitioners and partitionees of MEA and EA geographic area paging licenses may choose from two options to meet coverage requirements. Under the first option, both the partitioner and

partitionee must provide coverage to one-third of the population within their area within three years of the initial license grant, and to two-thirds of the population within their license area within five years of the license grant. In the alternative, either party may provide "substantial service" within five years of the license grant. Failure by either party to meet its coverage requirements will result in the automatic cancellation of its license without further Commission action. Under the second option, the original licensee may certify at the time of the partitioning transaction that it has already met, or will meet, the coverage requirements for the entire geographic area. In the event that the original licensee fails to meet the coverage requirements, its license will be cancelled. Under the second option, the partitionee is not subject to coverage requirements except for those necessary to obtain renewal.

- MEA and EA paging licensees will be permitted to disaggregate their spectrum by any method they choose. Disaggregators and disaggregatees may choose from two options to meet coverage requirements. Under the first option, either the disaggregator or the disaggregatee certifies that it will be responsible for meeting the coverage requirements for the geographic service area. If the certifying party fails to meet the coverage requirements for the entire geographic area, that party's license will be subject to cancellation, but the non-certifying party's license will not be affected. Under the second option, the disaggregator and disaggregatee may certify that they will share the responsibility for meeting the coverage requirements for the entire geographic area. If the parties jointly fail to satisfy the coverage requirements for the entire geographic area, both parties' licenses will be subject to cancellation.
- Partitionees and disaggregatees of nationwide geographic area, MEA, and EA paging licenses will be authorized to hold their licenses for the remainder of the partitioner's or disaggregator's original ten-year term and will receive the same renewal expectancy as the original licensee.
- We will also permit combinations of partitioning and disaggregation of nationwide geographic area, MEA, and EA paging licenses, subject to the Commission's rules on partitioning and disaggregation.
- The unjust enrichment provisions adopted in the *Part 1 Third Report and Order and Second Further Notice* will apply to any MEA or EA paging licensee that receives a bidding credit and later elects to partition or disaggregate its license.
- To deter fraud by application mills on the shared channels, we will add language to the long-form application regarding construction and coverage requirements. In addition, we will disseminate information regarding our licensing rules and the potential for fraud through public notices and the Commission's website.

III. BACKGROUND

3. In this proceeding, we examine our paging regulations in light of the statutory objective of regulatory symmetry for all CMRS as set forth in the Omnibus Budget Reconciliation Act of 1993

(1993 Budget Act).⁴ The 1993 Budget Act mandated that substantially similar mobile service receive comparable regulatory treatment.⁵ In the *CMRS Second Report and Order*, we noted that there are no longer any real differences between private carrier and common carrier paging systems and concluded that private carrier paging services offered for a profit should be subject to reclassification as CMRS as of August 10, 1996.⁶ We deferred modifying our rules governing service areas and channel assignments in the common carrier and private carrier paging services to a future proceeding until we could determine whether further conforming of our rules would be feasible.⁷

4. In the *Notice of Proposed Rulemaking (Notice)* in this proceeding, we proposed a transition from site-by-site licensing to geographic area licensing for all paging services licensed on an exclusive, non-nationwide basis.⁸ Our goals were to establish a comprehensive and consistent regulatory scheme that would simplify and streamline licensing procedures and provide a flexible operating environment for all paging services. We also proposed to adopt competitive bidding rules for mutually exclusive applications, so that available channels could be assigned rapidly to applicants who would expedite service to the public.⁹ We sought to ensure that our paging rules would be consistent with the rules for competing services, such as narrowband Personal Communications Services (narrowband PCS), so that competitive success would be dictated by the marketplace, rather than by regulation.¹⁰ Because of the fundamental changes we were proposing, the *Notice* suspended acceptance of new applications for paging channels as of February 8, 1996.¹¹ The *First Report and Order* adopted interim rules governing the licensing of paging systems during the pendency of the rulemaking proceeding. The interim rules allowed incumbent

⁴ Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI § 6002(b)(2)(a), (b), 107 Stat. 312 (largely codified at 47 U.S.C. § 332 *et seq.*) (1993 Budget Act).

⁵ See 47 U.S.C. § 337(c); see also Implementation of Sections 3(n) and 332 of the Communications Act, *Second Report and Order and Further Notice*, 9 FCC Rcd 1411 (1994) (*CMRS Second Report and Order*). In the *CMRS Second Report and Order*, the Commission began implementing its congressional mandate to establish regulatory symmetry among similar mobile services as provided in the 1993 Budget Act.

⁶ *CMRS Second Report and Order*, 9 FCC Rcd at 1452-53, ¶ 97. The Commission noted that the CMRS classification would not be extended to not-for-profit, non-interconnected paging systems, which would be presumptively classified as private mobile radio services (PMRS). *Id.* We are not revising the rules governing the non-reclassified PMRS systems in this proceeding.

⁷ *Id.* at 8053, ¶ 122.

⁸ Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, *Notice of Proposed Rulemaking*, 11 FCC Rcd 3108, 3113, ¶ 21 (1996) (*Notice*).

⁹ *Id.* at 3109, ¶ 1.

¹⁰ *Id.* at 3109, ¶ 2.

¹¹ *Id.* at 3136, ¶ 139. We did, however, allow applications for additional sites without restrictions for CCP and PCP licensees who had obtained nationwide exclusivity on a paging channel. Further, we allowed incumbent licensees to add sites to existing systems or modify existing sites, provided that such additions or modifications would not expand the interference contour of the incumbent's existing system. *Id.* at 3136-37, ¶¶ 140-142; see also Wireless Telecommunications Bureau Announces 929-930 MHz Paging Licensees That Have Met Construction Requirements for Nationwide Exclusivity, *Public Notice*, 11 FCC Rcd 12124 (1996).

licensees to file applications for additional sites within 65 kilometers (40 miles) of operating sites.¹² We also stated that we would process all paging applications for additional sites received through July 31, 1996, under the interim rules.¹³

5. In our *Second Report and Order and Further Notice*, we adopted rules governing geographic area licensing for exclusive channels in the 35-36 MHz, 43-44 MHz, 152-159 MHz, 454-460 MHz, 929-930 MHz, and 931-932 MHz bands allocated for paging, and competitive bidding procedures for granting mutually exclusive applications for non-nationwide geographic area licenses.¹⁴ We concluded that geographic area licensing would provide flexibility for licensees and ease of administration for the Commission, facilitate further build-out of wide-area systems, and enable paging operators to act quickly to meet the needs of their customers. We found that geographic area licensing would further our goal of providing carriers that offer substantially similar services more flexibility to compete, and would enhance regulatory symmetry between paging and narrowband PCS.¹⁵ We stated in the *Second Report and Order* that all pending mutually exclusive paging applications would be dismissed; all non-mutually exclusive paging applications filed on or before July 31, 1996, would be processed; all applications filed after July 31, 1996, would be dismissed (other than applications for nationwide or shared channels); and, other than for shared channels, no additional site-by-site applications would be accepted (with the exception of applications filed pursuant to sections 22.369 and 90.177, applications filed for coordination with Mexico and Canada, and applications required under section 1.1301 *et seq.*).¹⁶

6. With respect to shared channels, we retained our interim licensing rules that allowed only incumbents to file applications to add new sites to their systems, but eliminated the requirement that these applications be for sites located within 40 miles of an existing site operated by the licensee on the same channel.¹⁷ Thus, following the adoption of the *Second Report and Order*, incumbent licensees were permitted to file for new sites at any location.¹⁸ We also allowed new applicants to file applications for private, internal-use systems because such systems cannot be operated on a commercial basis, and thus would not be subject to speculative applications.¹⁹ Additionally, in our *Further Notice*, we sought comment on coverage requirements for nationwide licenses, partitioning of paging licenses, the feasibility

¹² Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, *First Report and Order*, 11 FCC Rcd 16570, ¶ 25 (*First Report and Order*), *affirmed on reconsideration*, 11 FCC Rcd 7409 (1996). Additionally, Basic Exchange Telecommunications Radio Service, Rural Radiotelephone Service, and Special Emergency Radio Service were exempted from the interim paging application freeze. *First Report and Order*, 11 FCC Rcd at 16587-88, ¶ 38.

¹³ FCC Clarifies Processing of Licensing Applications Under Interim Paging Rules, *Public Notice*, 11 FCC Rcd 7032 (1996) (*Interim Paging Rules Public Notice*).

¹⁴ *Second Report and Order and Further Notice*, 12 FCC Rcd at 2739, ¶ 6.

¹⁵ *Id.* at 2744, ¶ 15, 2745, ¶ 17, & 2748, ¶ 23.

¹⁶ *Id.* at 2739, ¶ 6.

¹⁷ *Id.* at 2757, ¶ 43.

¹⁸ *Id.*

¹⁹ *Id.*

of disaggregating paging spectrum, and modifying the application process for shared channels to reduce paging license application fraud.²⁰

IV. ORDER ON RECONSIDERATION

A. Dismissal of Pending Applications

7. **Background.** In the *Notice*, we suspended acceptance of new applications for both exclusive and non-exclusive paging channels as of February 8, 1996, in connection with the fundamental rule changes we proposed. In the *Second Report and Order and Further Notice*, we stated that, in light of our decision to adopt geographic area licensing, we would dismiss all pending mutually exclusive paging applications, including those filed under the interim rules adopted in the *First Report and Order*, and all applications filed after July 31, 1996.²¹ On December 14, 1998, the Commercial Wireless Division dismissed these applications pursuant to the *Second Report and Order and Further Notice*.²²

8. **Discussion.** Metrocall argues that the Commission should process the pending mutually exclusive applications and those filed after July 31, 1996, because the Commission did not notify the public prior to release of the *Second Report and Order* of its intent to dismiss those applications.²³ Blooston, Metrocall, Morris, Nationwide, PCIA, and Robert Kester also contend that by dismissing the pending applications, the Commission is unlawfully applying new rules retroactively.²⁴ We disagree. Courts have consistently recognized that the filing of an application creates no vested right to continued application of licensing rules that were in effect when the application was filed, and an application may be dismissed if substantive standards subsequently change.²⁵ In this proceeding, we dismissed pending

²⁰ *Id.* at 2820-26, ¶¶ 202-20.

²¹ *Id.* at 2739, ¶ 6; *see also supra* note 17 and accompanying text.

²² *See* Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, *Order*, WT Docket No. 96-18, DA 98-2543 (Dec. 14, 1998) (*CWD Order*).

²³ Metrocall, Inc. Motion to Stay Pending Reconsideration and Clarification (Metrocall Motion) at 3.

²⁴ Blooston, Mordkofsky, Jackson & Dickens Petition for Reconsideration (Blooston Petition) at 11-14; Metrocall Inc. Petition for Partial Reconsideration and Clarification (Metrocall Petition) at 11-16; Morris Communications, Inc. Petition for Partial Reconsideration and Clarification (Morris Petition) at 6-10; Nationwide Paging, Inc. Petition for Partial Reconsideration and Clarification (Nationwide Petition) at 6-10; Personal Communications Industry Association Petition for Reconsideration (PCIA Petition) at 17-18; Robert Kester Consolidated Petition for Reconsideration (Robert Kester Petition) at 7-9.

²⁵ *See United States v. Storer Broadcasting Co.*, 351 U.S. 192, 202-03 (1956) (upholding the dismissal without a comparative hearing of an application based on a rule adopted after the application was filed); *Chadmoore Communications Inc. v. FCC*, 113 F.3d 235, 240-41 (D.C. Cir. 1997) (permittee had no vested right in a particular outcome of its extension request that was abridged when the Commission dismissed that request pursuant to a subsequent, more restrictive rule); *Hispanic Information & Telecommunications Network v. FCC*, 865 F.2d 1289, 1294-95 (D.C. Cir. 1989); *see also* Implementation of Section 309(j) of the Communications Act -- Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, 13 FCC Rcd 15920, 15937, ¶ 44 (1998); Revision of Part 22 of the Commission's Rules Governing the Public Mobile Services, *Report and Order*, 9 FCC Rcd 6513, 6534, ¶ 100 (1994).

applications based on our substantive rule changes establishing geographic area licensing for paging. In proposing these rule changes, we stated our intention to process pending applications filed prior to the adoption of the *Notice* provided that the applications were not mutually exclusive with other applications, and provided that the relevant period for filing competing applications had expired as of the adoption date of the *Notice*.²⁶ We stated that following adoption of final rules, we would process or dismiss all remaining pending applications in accordance with the new rules.²⁷ Following the adoption of interim licensing rules in the *First Report and Order*, we gave notice that we would process paging applications received through July 31, 1996, under our interim rules.²⁸

9. Metrocall, PCIA, and Western Maryland Wireless further contend that carriers with pending applications that the Commission decided to dismiss will be harmed because these applicants reasonably relied on the Commission's prior procedures for processing applications.²⁹ Additionally, Metrocall argues that the Commission has failed to explain why the processing of pending mutually exclusive applications would in any way undermine geographic area licensing, and that the order is silent as to why dismissal of these applications is necessary to serve either the public interest or some other policy objective.³⁰ Blooston also argues that because the Commission continued to accept expansion applications after July 31, 1996, dismissal would be grossly unfair.³¹ Priority and Robert Kester argue that the only discernible reason for licensing paging spectrum through competitive bidding is to raise money for the Federal government.³² In light of the notice we gave of our interest in instituting geographic area licensing, and of our intent not to process applications filed after July 31, 1996, we do not believe that any applicants could have reasonably relied on our processing applications filed after that date.³³ In addition, once we had decided that it was in the public interest to employ geographic area licensing and competitive bidding in the paging services, it would not have served the industry or the public well to have continued the process of site-by-site licensing. Such licensing has the potential to create significant uncertainty regarding the spectrum available to bidders in the auctions and thus to delay the implementation of geographic area licensing. Moreover, we do not think that carriers that had previously pending applications will be irreparably harmed by a decision to proceed to the auction of paging licenses without any further processing of site-specific applications because such applications were dismissed without prejudice and these applicants may therefore file applications to participate in the

²⁶ *Notice*, 11 FCC Rcd at 3137, ¶ 144.

²⁷ *Id.*

²⁸ *Interim Paging Rules Public Notice*, 11 FCC Rcd at 7032.

²⁹ Metrocall Petition at 13; PCIA Petition at 18; Western Maryland Wireless Company Petition for Reconsideration (Western Maryland Petition) at 2-5.

³⁰ Metrocall Motion at 4.

³¹ Blooston Petition at 15-16.

³² Priority Communications, Inc. Petition for Reconsideration (Priority Petition) at 7-10; Robert Kester Petition at 9-10.

³³ *Interim Paging Rules Public Notice*, 11 FCC Rcd at 7032 (stating that the extent to which post-July 31 applications are processable may be affected by the timing of a final order in the proceeding and the transition to new licensing rules).

auctions. Our reasons for adopting competitive bidding procedures for paging licenses are set forth at length in the *Notice and Second Report and Order and Further Notice*, and these reasons do not include revenue-raising considerations.³⁴ Finally, we note that we concluded in the *Competitive Bidding Second Report and Order* that mutually exclusive initial paging applications were auctionable under the auction authority provided the Commission by the 1993 Budget Act.³⁵ This conclusion is unchanged by the Balanced Budget Act of 1997, which amended Section 309(j) to expand the Commission's auction authority.³⁶ The Commission is now required to assign initial licenses by competitive bidding whenever mutually exclusive applications are accepted for filing, with certain limited exceptions.³⁷ We have concluded in other proceedings that the revised statute does not require us to re-examine our determinations that specific services or frequency bands were auctionable under the more restrictive definition of the 1993 Budget Act.³⁸

10. Metrocall asserts that although the Commission has promoted auctions as a means of expediting the licensing of paging spectrum, the dismissal of pending applications undermines that policy goal because dismissal will undoubtedly delay the initiation of paging service in many market areas.³⁹ Metrocall further argues that delay will cause irreparable injury to them because it will prevent the expansion of its networks, encourage customers to seek other services, and cause uncertainty in its business planning (e.g., purchasing equipment or making financial commitments for new transmitter sites).⁴⁰ Metrocall suggests that mutually exclusive applications could be granted more quickly if, prior to the auction of geographic area licenses, an auction were scheduled for the pending mutually exclusive site-by-site applications, and bidding were limited to those applicants that filed within the cut-off period.⁴¹

³⁴ See *infra* at ¶ 32 (setting forth the reasons for adopting competitive bidding, none of which include revenue-enhancing considerations).

³⁵ See Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, *Second Report and Order*, 9 FCC Rcd 2348, 2359 ¶¶ 61, 63, *on reconsideration*, *Second Memorandum Opinion and Order*, 9 FCC Rcd 7245 (1994) (*Competitive Bidding Second Report and Order*).

³⁶ Balanced Budget Act of 1997, Pub. L. No. 105-33, § 3002, 111 Stat. 251 (1997) (amending 47 U.S.C. § 309(j)); see also *Fresno Mobile Radio, Inc. v. FCC*, No. 978-1459 (D.C. Cir. Feb. 5, 1999).

³⁷ See 47 U.S.C. § 309(j); see also Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended, *Notice of Proposed Rule Making*, WT Docket No. 99-87, FCC 99-52 (Mar. 25, 1999) (*BBA NPRM*).

³⁸ See *BBA NPRM*, WT Docket No. 99-87, FCC 99-52, at ¶ 24 (stating that consistent with previous proceedings, the *NPRM* will not re-examine the Commission's previous determinations that specific services or frequency bands were auctionable under the 1993 Budget Act); Amendment of the Commission's Rules Concerning Maritime Communications, *Third Report and Order and Memorandum Opinion and Order*, 13 FCC Rcd 19853, 19882-83 at ¶¶ 60-61 (1998) (earlier finding that public coast service is subject to competitive bidding is unchanged by Balanced Budget Act); Amendment of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems, *Second Report and Order*, 13 FCC Rcd 15182, 15187-88 ¶ 9 (1998), *on reconsideration*, PR Docket No. 93-61, FCC 99-3 at ¶¶ 3-4 (Jan. 21, 1999).

³⁹ Metrocall Motion at 4.

⁴⁰ *Id.* at 5-6; Metrocall Petition at 14-15.

⁴¹ Metrocall Motion at 4-5; Metrocall Petition at 15.

Blooston and Robert Kester argue that only applicants with existing mutually exclusive applications should be permitted to participate in competitive bidding for these licenses.⁴² We find, however, that it was the formidable administrative burden of processing site-by-site applications, and the substantial number of mutually exclusive applications that were filed, which created a backlog of pending applications and caused their processing to be delayed. We further find that holding an additional auction for the purpose of resolving mutually exclusive site-by-site licenses, prior to conducting an auction for geographic areas containing these same sites, would be grossly inefficient. Limiting bidding for each site to the mutually exclusive applicants for that site would require the Commission to undertake an onerous engineering analysis of each site and examine relationships among many applications to determine eligible bidders. It is this type of inefficient processing that the Commission seeks to eliminate.⁴³ Moreover, as noted above, applicants whose mutually exclusive applications were dismissed without prejudice have the opportunity to participate in the geographic area auction.

11. Citing section 309(j)(6)(E) of the Communications Act of 1934, Blooston, Priority, ProNet, Schuylkill, and Western Paging⁴⁴ contend that the Commission may not proceed to geographic area licensing without first attempting to avoid mutual exclusivity through "engineering solutions, negotiation, threshold qualifications, service regulations, and other means."⁴⁵ Metrocall, Morris, and Nationwide argue that by dismissing pending applications and accepting new applications for an auction, the Commission is creating mutual exclusivity in violation of section 309(j)(6)(E).⁴⁶ The Commission has previously construed Section 309(j)(6)(E) to mean that it has an obligation to attempt to avoid mutual exclusivity by the methods prescribed therein only when it would further the public interest goals of Section 309(j)(3).⁴⁷ In the *Second Report and Order*, the Commission adopted geographic area licensing

⁴² Blooston Petition at 11-12; Robert Kester Petition at 12-14.

⁴³ See *Notice*, 11 FCC Rcd at 3113, ¶ 21. Inefficiencies in our former rules created a vast web of relationships between applications for individual transmitter sites at various locations. For example, Applicant A seeks a license for proposed operations that overlap the service area created by Applicant B's proposed operations, which in turn overlap the service area created by Applicant C's proposed operations, with overlapping service areas continuing indefinitely. *Id.* at 3113, ¶ 21 & n.53.

⁴⁴ Blooston Petition at 13; Priority Petition at 5-7; ProNet Inc. Comments on Petitions for Reconsideration (ProNet Comments on Petitions for Reconsideration) at 4-5; Schuylkill Petition for Reconsideration and Clarification (Schuylkill Petition) at 1-3; Western Paging I Corporation and Western Paging II Corporation Petition for Reconsideration and Clarification (Western Paging Petition) at 1-3.

⁴⁵ 47 U.S.C. § 309(j)(6)(E) provides: "Nothing in this subsection, or in the use of competitive bidding, shall... be construed to relieve the Commission of the obligation in the public interest to continue to use engineering solutions, negotiation, threshold qualifications, service regulations, and other means in order to avoid mutual exclusivity in application and licensing proceedings."

⁴⁶ Metrocall Petition at 15; Morris Petition at 9-10; Nationwide Petition at 9-10.

⁴⁷ See *DIRECTV, Inc. v. FCC*, 110 F.3d 816, 828 (D.C. Cir. 1997) ("Nothing in § 309(j)(6)(E) requires the FCC to adhere to a policy that it deems outmoded 'to avoid mutual exclusivity in ... licensing proceedings'"); Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR systems in the 800 MHz Frequency Band, *Second Report and Order*, 12 FCC Rcd 19079, 19104, 19154 ¶¶ 62, 230 (1997) (*800 MHz Second Report and Order*); Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR systems in the 800 MHz Frequency Band, *Memorandum Opinion and Order on Reconsideration*, 12 FCC Rcd 9972, 10009-10 ¶ 115 (1997) (*800 MHz Memorandum Opinion & Order*) (Section 309(j)(6)(E) does not prohibit

for the paging services, concluding that the public interest would be better served by licensing all remaining paging spectrum through a geographic licensing scheme than by processing additional site-specific licenses.⁴⁸ The Commission reasoned that geographic area licensing provides flexibility for licensees and ease of administration for the Commission, facilitates build-out of wide-area systems, and enables paging operators to act quickly to meet the needs of their customers.⁴⁹ The Commission thereby effectively determined that it would not be in the public interest to implement other licensing schemes or other processes that avoid mutual exclusivity, thus fulfilling the Commission's obligation under Section 309(j)(6)(E). As noted above, we have concluded in other proceedings that the Balanced Budget Act's revision of our auction authority does not require us to re-examine determinations regarding the use of geographic licensing and competitive bidding that were made under the auction authority provided by the 1993 Budget Act.⁵⁰ Accordingly, we affirm our previous decision to dismiss all pending applications.

12. Several petitions for reconsideration and an application for review were filed in response to the *CWD Order*.⁵¹ Contending that their pending applications should not have been dismissed, the parties generally reiterate the same arguments against dismissing their applications that were set forth in the petitions for reconsideration filed in response to the *Second Report and Order*. Having already considered these arguments, we deny the petitions for reconsideration and application for review of the *CWD Order* that are listed in footnote 52.⁵²

13. Metrocall argues that non-mutually exclusive applications filed after July 31, 1996, and prior to adoption of the *Second Report and Order and Further Notice* could be granted immediately, resulting in immediate benefits to consumers who cannot currently receive service.⁵³ We believe, however, for the reasons stated above, that a grant of paging applications filed after July 31, 1996, would be

Commission from conducting an auction without first attempting alternative licensing mechanisms to avoid mutual exclusivity); see also Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands, *Report and Order and Second Notice of Further Rule Making*, 12 FCC Rcd 18600, 18647 ¶ 101 (1997) (previous rules that arguably avoided mutual exclusivity were no longer adequate for other reasons).

⁴⁸ *Second Report and Order and Further Notice*, 12 FCC Rcd at 2744, ¶ 15 & 2748, ¶ 23.

⁴⁹ *Id.* at 2744, ¶ 15.

⁵⁰ See *supra* at note 39 and accompanying text.

⁵¹ Robert J. and Laurie F. Keller d/b/a Western Maryland Wireless Company filed an application for review on December 28, 1998. Petitions for reconsideration were filed on January 13, 1999, by the following parties: AirTouch Paging, AirTouch Paging of California, AirTouch Paging of Kentucky, AirTouch Paging of Texas, AirTouch Paging of Virginia, Allcom Communications, Inc., Arch Capitol District, Inc., Arch Connecticut Valley, Inc., Arch Southeast Communications, Inc., Becker Beeper, Inc., Blasiar, Inc., Electronic Engineering Company, Hello Pager Company, Paging Systems Management, Inc., PowerPage Inc., Robert Kester *et al.*, Satellite Paging, Inc., South Texas Paging, Inc. (Arthur Flemmer), USA Mobile Communications, Inc. II, Westlink Licensee Corporation, and Westlink of New Mexico Licensee.

⁵² Petitions for reconsideration of the *CWD Order* were also filed on January 13, 1999, by Ameritech Mobile Services, Inc., Capitol Radiotelephone Company Inc. dba Capitol Paging, Clear Paging, Inc., and Express Message Corporation. Because these petitioners raise arguments specific to whether their applications were actually mutually exclusive with other applications, we will resolve their petitions in a separate order.

⁵³ Metrocall Petition at 15-16.

inconsistent with the goals of this proceeding. The Commission has given consideration to applicants who filed applications prior to the Commission's proposed licensing changes, after which parties were on notice of the possibility that their applications might be dismissed because of the decision to conduct auctions.⁵⁴

B. Geographic Area Licensing

1. 929-931 MHz Bands

14. **Background.** In adopting geographic area licensing for the 929 MHz and 931 MHz paging channels, we concluded that Major Trading Areas (MTAs) are an appropriate geographic area for paging systems on these channels because they are economically defined regions that best reflect the size and development of existing paging systems.⁵⁵ In the *Second Report and Order and Further Notice*, we also eliminated section 90.496 of our rules, which provided for extended implementation of construction and operations deadlines for proposed systems on the 929-930 MHz band that qualified for regional or nationwide channel exclusivity.⁵⁶ As explained in the *Notice*, we found that extended implementation would be unnecessary under our geographic area licensing scheme and, in fact, would hinder geographic area licensing because construction extensions for incumbents could effectively allow them to occupy an entire geographic area.⁵⁷

15. **Discussion.** Metrocall and PCIA request that the Commission replace MTAs with Major Economic Areas (MEAs) for geographic licensing for the 929 and 931 MHz bands.⁵⁸ AirTouch also supports this proposal.⁵⁹ Metrocall states that MEAs are similar to MTAs but are less extensive and unwieldy.⁶⁰ PCIA contends that MEAs correspond to the service areas that have developed in the marketplace. PCIA further contends that MEAs will be more advantageous than MTAs to geographic area licensees on the 929 and 931 MHz bands because MEAs are made up of the Economic Areas (EAs) that will be used for the lower bands.⁶¹ PCIA and AirTouch contend that 929 and 931 MHz licensees that also have systems on the lower bands would be able to operate more efficiently if they were licensed based on MEAs because EAs are entirely encompassed within MEAs.⁶² Metrocall, PCIA, and AirTouch also observe that the use of MEAs would not subject geographic area licensees to royalty payments to Rand

⁵⁴ We note that the Commission has granted over 3,500 applications that were filed between May 10, 1996, and July 31, 1996.

⁵⁵ *Second Report and Order and Further Notice*, 12 FCC Rcd at 2744-45, ¶ 16.

⁵⁶ *Id.* at 2856.

⁵⁷ *Notice*, 11 FCC Rcd at 3118, ¶ 42.

⁵⁸ Metrocall Petition at 24; PCIA Petition at 19-21.

⁵⁹ Comments of AirTouch Paging on Petitions for Reconsideration (AirTouch Comments on Petitions for Reconsideration) at 13-14.

⁶⁰ Metrocall Petition at 24.

⁶¹ PCIA Petition at 20.

⁶² AirTouch Comments on Petitions for Reconsideration at 14; PCIA Petition at 20.

McNally as would the use of MTAs.⁶³ Finally, no parties to this proceeding opposed the petitioners' proposal.

16. We agree with Metrocall, PCIA, and AirTouch that MEAs should be used instead of MTAs. In the *Second Report and Order and Further Notice*, we determined that MTAs are economically defined regions that best reflect the size and development of existing paging systems. However, at the time of our initial determination, the Commission had not established MEAs, which were first developed by the Commission to define geographic license areas for the Wireless Communications Service (WCS).⁶⁴ In the *WCS Report and Order*, the Commission determined that MEAs would enable a large number of entities to participate in the provision of services and result in increased competition, encourage a more diverse group of service providers to participate in competitive bidding, and result in broader flexibility in service offerings by licensees.⁶⁵

17. Although MTAs and MEAs are substantially similar, we find that geographic area licensing based on MEAs will provide geographic area licensees with additional benefits that could not be obtained if we maintained MTAs as the geographic area for the 929-931 MHz band. We recognize that licensees with paging systems in both the 929-931 MHz band and the lower bands will benefit from our using MEAs for the 929-931 MHz band because MEAs are composed of EAs. The fact that the geographic borders of MEAs coincide with those of the EAs contained within the MEAs will enable licensees with both upper and lower band systems to operate more efficiently. We also agree with AirTouch that adopting MEAs on the 929 and 931 MHz channels will enhance competition between the paging systems on the lower channels and the paging systems on the 929 and 931 MHz channels because the paging systems on the lower channels will be able to combine their EAs to form MEAs. We also acknowledge that licensees will benefit economically from licensing based on a geographic designation that is in the public domain. Therefore, based on the foregoing, we adopt MEAs as the geographic licensing area for the 929-931 MHz band.⁶⁶

18. Finally, we reject PSWF's contention that the decision to eliminate section 90.496 was arbitrary and capricious and an unlawful retroactive rulemaking without the opportunity for notice and comment.⁶⁷ We sought comment in the *Notice* on our proposal to eliminate extended implementation and

⁶³ AirTouch Comments on Petitions for Reconsideration at 14; Metrocall Petition at 24; PCIA Petition at 20-21.

⁶⁴ See Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service ("WCS"), *Report and Order*, 12 FCC Rcd 10785, 10814, ¶ 54 (1997) (*WCS Report and Order*). In the *WCS Report and Order*, we aggregated EAs into 52 MEAs, including 46 in the continental United States and an additional six areas covering Alaska (MEA #47), Hawaii (MEA #48), Guam and the Northern Mariana Islands (MEA # 49); Puerto Rico and the U.S. Virgin Islands (MEA #50); American Samoa (MEA #51); and the Gulf of Mexico (MEA #52). The Commission has sought comment on licensing commercial mobile radio services generally in the Gulf of Mexico in a separate proceeding. See *Cellular Service and Other Commercial Mobile Radio Services in the Gulf of Mexico, Second Further Notice of Proposed Rulemaking*, 12 FCC Rcd 4576 (1997). We therefore adopt only 51 MEAs at this time for paging services.

⁶⁵ *WCS Report and Order*, 12 FCC Rcd at 10815, ¶ 57.

⁶⁶ A list of the MEAs is set forth in Appendix B, revised rule section 22.503(b).

⁶⁷ PSWF Corporation Petition for Partial Reconsideration at 5-8.

to dismiss all "slow growth" applications pending at the time an order pursuant to the *Notice* was adopted without prejudice to refile under our geographic area licensing scheme.⁶⁸ Neither PSWF nor its predecessor-in-interest American Mobilphone, Inc. submitted comments on these proposals. We clarify, however, that removal of section 90.496 of our rules does not affect the rights associated with extended implementation authority granted under that rule as of May 12, 1997, the effective date of the *Second Report and Order and Further Notice*. In addition, any requests pending as of May 12, 1997, are dismissed without prejudice to obtain licenses under our geographic area licensing rules.⁶⁹

2. 35-36 MHz, 43-44 MHz, 152-159 MHz, and 454-460 MHz Bands

19. **Background.** In the *Second Report and Order and Further Notice*, we concluded that Basic Trading Areas (BTAs) would be too small as a service area for the majority of existing paging systems on the lower channels.⁷⁰ We indicated that EAs, which consist of a metropolitan area or similar center of economic activity and the surrounding economically related counties, would provide geographic area licensees with the flexibility to construct transmitters at any location within their EA, as well as provide more opportunities for the entry of new applicants into the paging market, such as small businesses and rural telephone companies.⁷¹ Thus, we determined that EAs, which are smaller than MTAs but larger than BTAs, would be appropriate for geographic area licensing on the 35-36 MHz, 43-44 MHz, 152-159 MHz, and 454-460 MHz bands.⁷²

20. **Discussion.** Consolidated recommends using BTAs for geographic area licensing.⁷³ Consolidated contends that the size of EAs will prevent small and rural paging companies from participating in the geographic area licensing auction.⁷⁴ Consolidated states that EAs contain major urban areas as well as rural and suburban areas, and that small and rural companies, such as Consolidated, are

⁶⁸ *Notice*, 11 FCC Rcd at 3118, ¶ 42.

⁶⁹ PSWF also argued in its petition that elimination of section 90.496 was a violation of its due process rights. PSWF Petition at 1-5. PSWF's petition requests that the Commission process its pending extended implementation request filed in January 1997, for paging authorizations granted on 929.8125 MHz between May and July of 1996. *Id.* However, on November 5, 1998, the Commercial Wireless Division, Wireless Telecommunications Bureau, clarified that PSWF was entitled to regional exclusivity with regard to authorizations granted on 929.8125 MHz between August 1993, and February 1994. PSWF Corporation and Communications Innovations Corporation, *Order*, 13 FCC Rcd 22451 (1998) (*PSWF Order*). In the *PSWF Order*, PSWF's extended implementation request was dismissed as moot because the transmitter sites that were the subject of its extended implementation request were identical to those for which it was granted regional exclusivity. *Id.* at 22457, ¶ 12. For the same reasons, PSWF's due process argument in its petition for reconsideration is also moot.

⁷⁰ There are 487 BTAs in the United States, some of which are smaller than counties.

⁷¹ *Second Report and Order and Further Notice*, 12 FCC Rcd at 2748-49, ¶¶ 23-24.

⁷² *Id.* at 2746, ¶ 20.

⁷³ Petition for Partial Reconsideration and Request for Clarification of Consolidated Communications Telecom Services, Inc. (Consolidated Petition) at 8-9.

⁷⁴ *Id.* at 5.

only interested in the rural and suburban areas of the EA.⁷⁵ Consolidated also argues that partitioning does not address the concerns of small and rural companies, which will "be at the mercy" of larger geographic area licensees for expansion.⁷⁶ Contrary to Consolidated's argument, we believe that the size of EA geographic areas will not prevent paging operators of smaller systems from participating in geographic area licensing auctions. In the 220 MHz auction, we adopted EAs and 39 small entities successfully acquired 358 EA licenses.⁷⁷ We also believe bidding credits will allow small businesses to compete against larger bidders. Further, small and rural paging companies will not be prevented from expanding their systems even if they choose not to participate in the geographic area licensing auction, because we will allow geographic area licensees to partition their service areas and we have no reason to believe that geographic area licensees will be unwilling to enter into partitioning agreements. Conversely, small companies may choose to acquire a geographic area license and partition any areas they do not wish to serve themselves. We continue to conclude that EAs, which the majority of commenters supported, best reflect the geographic area that the paging licensees on the lower channels seek to serve. We therefore reject Consolidated's proposal to use a BTA licensing scheme, and affirm our decision to employ EAs as the geographic area for the lower paging bands.

21. PRTC states that we did not adopt EA-like areas for Guam and the Northern Mariana Islands, Puerto Rico and the U.S. Virgin Islands, and American Samoa.⁷⁸ Consequently, PRTC requests that section 22.503(b)(3) of the Commission's rules be revised to include three additional EA-like areas for the U.S. territories.⁷⁹ We inadvertently omitted these three EA-like service areas from the *Second Report and Order and Further Notice*. We therefore adopt PRTC's recommendation and add the following three EA-like service areas: Guam and the Northern Mariana Islands (EA 173); Puerto Rico and the United States Virgin Islands (EA 174); and American Samoa (EA 175).⁸⁰

3. Highly Encumbered Areas

22. **Background.** In the *Second Report and Order and Further Notice*, we concluded that we would grant mutually exclusive applications for geographic area licenses through competitive bidding even in areas extensively built out by an incumbent licensee.⁸¹ We also rejected a proposal by commenters to restrict competitive bidding to incumbent licensees. We determined that all qualified paging applicants should be eligible to bid for any geographic area license.⁸² We noted that if an incumbent already has a significant presence in a geographic area, other potential applicants may choose

⁷⁵ *Id.* at 7-8.

⁷⁶ *Id.* at 6.

⁷⁷ See Phase II 220 MHz Service Auction Closes, Winning Bidders in the Auction of 908 Phase II 220 MHz Service Licenses, DA 98-2143, *Public Notice* (Oct. 23, 1998).

⁷⁸ Puerto Rico Telephone Company Petition for Reconsideration and Clarification (PRTC Petition) at 1-2.

⁷⁹ *Id.* at 2.

⁸⁰ The revised Section 22.503(b) is in Appendix B.

⁸¹ *Second Report and Order and Further Notice*, 12 FCC Rcd at 2758-59, ¶ 45.

⁸² *Id.*

not to bid for that geographic area. Thus, market forces, not regulation, would determine participation in competitive bidding for geographic area licenses.⁸³

23. **Discussion.** Petitioners argue that those incumbent licensees that have previously satisfied certain coverage requirements should receive a geographic area license without competitive bidding.⁸⁴ PCIA advocates granting a market area license to an incumbent providing coverage to at least 70 percent of its market.⁸⁵ Advanced, Arch, and Metrocall similarly argue for granting market area licenses to incumbents providing coverage to two-thirds or a similar percentage of the market.⁸⁶ PageNet suggests different possible thresholds.⁸⁷ PageNet and PCIA propose a two-step process for granting market area licenses.⁸⁸ First, where an incumbent operator certifies that it covers 70 percent of a market area's population or geographic area, the Commission should grant a market area license to that incumbent.⁸⁹ PCIA further suggests that if multiple incumbents serving a market on a single frequency together cover 70 percent of the population or geographic area, those licensees should be permitted jointly to file an application that demonstrates their joint coverage, and receive a market area license on that basis.⁹⁰ In the second step, interested parties could file applications for all remaining available frequencies in each market.⁹¹ According to PCIA, mutually exclusive applications would then be subject to the Commission's

⁸³ *Id.*

⁸⁴ Advanced Paging, Inc. Petition for Reconsideration (Advanced Petition) at 4-13; AirTouch Comments on Petitions for Reconsideration at 6-7; Arch Communications Group, Inc. Petition for Partial Reconsideration and Request for Clarification (Arch Petition) at 7; Opposition and Comments of Arch Communications Group, Inc. (Arch Opposition) at 3; Reply of Arch Communications Group, Inc. (Arch Reply) at 2-3; MetroCall Petition at 6-11; Metrocall, Inc. Response to Petitions for Reconsideration (Metrocall Response to Petitions for Reconsideration) at 11-12; Paging Network Petition for Partial Reconsideration and Clarification (PageNet Petition) at 4-6; PageNet October 27, 1998 *Ex Parte* at 1-2; Priority Petition at 7; Puerto Rico Telephone Company Reply (PRTC Reply) at 1-4; PCIA Petition at 4-7; PCIA October 26, 1998 *Ex Parte*; PCIA October 13, 1998 *Ex Parte*; PCIA September 21, 1998 *Ex Parte*; PCIA September 18, 1998 *Ex Parte*; PCIA September 3, 1998 *Ex Parte*.

⁸⁵ PCIA Petition at 5-7; PCIA October 26, 1998 *Ex Parte*; PCIA October 13, 1998 *Ex Parte*; PCIA September 21, 1998 *Ex Parte*; PCIA September 18, 1998 *Ex Parte*; PCIA September 3, 1998 *Ex Parte*.

⁸⁶ Advanced Petition at 8; Arch Petition at 7; Metrocall Petition at 8. Both proposals are based on the Commission's five-year construction benchmark requiring a geographic licensee to provide coverage to two-thirds of the population within five years of the license grant; see Arch Petition at 7; PCIA October 26, 1998 *Ex Parte* at 7.

⁸⁷ In its petition, PageNet advocated awarding geographic area licenses to any incumbent that demonstrated it covers two-thirds or more of the market's population, PageNet Petition at 4-6, while in its October 27, 1998 *ex parte*, PageNet cited a threshold amount of 70 percent, PageNet October 27, 1998 *Ex Parte* at 1-2.

⁸⁸ PageNet October 27, 1998 *Ex Parte* at 1; PCIA October 26, 1998 *Ex Parte* at 4-8; PCIA September 21, 1998 *Ex Parte*; PCIA September 18, 1998 *Ex Parte*; PCIA September 3, 1998 *Ex Parte*.

⁸⁹ PageNet October 27, 1998 *Ex Parte* at 1; PCIA October 26, 1998 *Ex Parte* at 6.

⁹⁰ PCIA October 26, 1998 *Ex Parte* at 7.

⁹¹ PageNet October 27, 1998 *Ex Parte* at 1; PCIA October 26, 1998 *Ex Parte* at 6.

auction rules.⁹² Arch and PageNet alternatively propose to limit eligible bidders to the same-channel incumbents operating within the geographic area or in an area adjacent to the geographic area license.⁹³

24. Petitioners present a number of arguments in support of their proposals. They argue, for example, that, under the Commission's rules adopted in the *Second Report and Order and Further Notice*, new opportunities for greenmail and speculative applications will result in inflated auction prices,⁹⁴ and reliable service will decline because auctions introduce additional parties for coordination and negotiation and customers will be unable to receive or obtain services if multiple providers are using the same channel within a market area.⁹⁵ Petitioners further argue that new entrants will increase the potential for co-channel interference;⁹⁶ "dead zones" will occur between the incumbent and geographic area licensee's service areas;⁹⁷ the incumbent's ability to expand to provide the "widest area coverage" will be blocked if a new entrant wins at auction;⁹⁸ new entrants will be encouraged to enter markets where it would not be economically viable to do so;⁹⁹ and customers will not reap the benefits of competition.¹⁰⁰ In addition,

⁹² PCIA October 26, 1998 *Ex Parte* at 7.

⁹³ Arch Petition at 7; PageNet Petition at 6.

⁹⁴ See Advanced Petition at 6-9; Arch Petition at 7; Blooston Petition at 10-11; Metrocall Petition at 8; PageNet Petition at 2 & 5; PCIA Petition at 4-7; PCIA October 26, 1998 *Ex Parte* at 7-8; PRTC Reply at 3-4. In its Petition, PageNet argues that "greenmailers" might "do no more than place a single transmitter in the remaining white space for five years," forcing paging carriers "to bid, not at the legitimate value of the few remaining transmitter locations, but to keep those locations from falling into the hands of someone else who seeks only to extract exorbitant rates from them for the future right to expand." PageNet Petition at 2. In its Petition, PCIA argues that the Commission's auction rules "create an environment that is highly conducive to the filing of fraudulently induced and speculative applications." PCIA Petition at 4. Specifically, PCIA is concerned that "insincere applicants" participating in the auction will drive up the price of geographic area licenses, and the history of the paging market and IVDS suggests that adoption of a competitive bidding process is not a complete solution to the filing of speculative applications. *Id.* at 6-7. In addition, Advanced argues that bidders that "park" their bids in low-priced markets, for which they have little or no genuine interest, to comply with the activity rules will artificially inflate the bidding for markets in which an incumbent has already met the coverage requirements. Advanced Petition at 8-9.

⁹⁵ PCIA October 26, 1998 *Ex Parte* at 4-5; see PageNet October 27, 1998 *Ex Parte* at 2.

⁹⁶ See Advanced Petition at 5-6 & 9-10; Metrocall Petition at 9-10; PageNet October 27, 1998 *Ex Parte* at 2; PCIA October 26, 1998 *Ex Parte* at 4-5.

⁹⁷ See PageNet October 27, 1998 *Ex Parte* at 2; PCIA October 26, 1998 *Ex Parte* at 4-5.

⁹⁸ See Advanced Petition at 5; Blooston Petition at 11; Metrocall Petition at 7; PageNet Petition at 4-5; PageNet October 27, 1998 *Ex Parte* at 1; PCIA Petition at 6-7.

⁹⁹ See Metrocall Petition at 7-8; PCIA October 26, 1998 *Ex Parte* at 4.

¹⁰⁰ See Advanced Petition at 7-8; Metrocall Petition at 7; PageNet October 27, 1998 *Ex Parte* at 2. Metrocall asserts that the Commission's decision not to adopt automatic licensing for incumbents "guarantees inefficient use of the spectrum" and the public will bear the ultimate burden "in the form of less competitive rates and less efficient service options." Metrocall Petition at 7. PageNet argues that customers can only reap the benefits of competition if carriers operate on different frequencies in the same or overlapping territory. PageNet October 27, 1998 *Ex Parte*

Advanced, Metrocall, and PageNet state that an applicant is not qualified if it cannot meet the construction benchmark of covering two-thirds of the population of an MTA where operating incumbents already meet the coverage requirements.¹⁰¹ Metrocall and PageNet further assert that the Commission's current rules do not meet its statutory obligation to avoid mutual exclusivity, while mutual exclusivity could be avoided through "threshold qualifications," identified in their percent-of-coverage proposals.¹⁰² Finally, Metrocall asserts that despite the "overwhelming support for granting geographic [area] licenses to incumbents," and because the Commission has "failed to provide any factual basis" for its decision not to adopt automatic licensing for incumbents, that decision is contrary to the record in this proceeding and, therefore, arbitrary and capricious.¹⁰³

25. While we recognize that some geographic areas are significantly served by incumbent licensees, we believe that the market should decide whether an economically viable paging system can be established in the unserved area of a geographic market. For instance, an incumbent licensee might consider the unserved area within its "home" geographic market to be beyond the scope of its business plans. In contrast, a paging provider that primarily serves an adjacent geographic market may have a strong desire to serve the unserved area in its neighbor's "home" market. In addition, even where only 30 percent of a geographic area is available to a potential new entrant, we do not believe that it has been shown that the new entrant cannot establish a viable system that serves the public as well as the incumbent. Thus, we cannot conclude that an incumbent licensee is entitled to a geographic area license without competitive bidding simply because its paging system may cover a substantial portion of the geographic area. We therefore continue to believe that all otherwise qualified paging applicants should be eligible to bid for any geographic area license. Open eligibility promotes prompt service to the public by allocating spectrum to the entity that values it most.

26. We also believe the benefits of open eligibility outweigh the risks that speculators and misguided applicants pose to the competitive bidding process. Although under our prior rules, which did not allow for competitive bidding, fraudulent application preparers duped a number of consumers into submitting unwarranted site-specific applications for Specialized Mobile Radio (SMR) service licenses with promises of a quick re-sale profit,¹⁰⁴ we do not believe that this problem has arisen in connection with any of our auctions of communications licenses. Nor do we have any evidence that this is likely to become a significant problem as we auction paging licenses. Indeed, while speculation can be a problem when licenses are awarded through such systems as lotteries, we believe that auctions deter speculation. Parties must make an upfront payment on each desired market and make minimum opening bids, and they are subject to bid withdrawal payments. They must also make full payment at the close of the auction for any licenses on which they are the high bidder, or pay default payments. Thus, the opportunity cost of speculating can be high, and engaging in speculative bidding is highly risky. We have auctioned other highly encumbered services, such 800 MHz and 900 MHz SMR and 220 MHz, and have not seen any

at 2.

¹⁰¹ Advanced Petition at 10-11; Metrocall Petition at 8; PageNet Petition at 5; PRTC Reply at 4.

¹⁰² Metrocall Petition at 7; PageNet October 27, 1998 *Ex Parte* at 1; PRTC Reply at 3.

¹⁰³ Metrocall Petition at 10-11; *see* Advanced Petition at 4.

¹⁰⁴ *See, e.g.,* Daniel R. Goodman, Receiver, Dr. Robert Chan, Petition for Waiver of Sections 90.633(c) and 1.1102 of the Commission's Rules, *Memorandum Opinion and Order and Order on Reconsideration*, 13 FCC Rcd 21944 (1998).

evidence that speculative applications have raised bidding prices. Petitioners also have not provided any evidence that speculative applications have raised bidding prices in prior auctions.

27. Issues related to coverage requirements and co-channel interference are addressed in other sections of this Order. A new entrant will be able to meet its coverage requirements by providing substantial service within the geographic area¹⁰⁵ and geographic area licensees must provide co-channel protection to all incumbents.¹⁰⁶ Moreover, petitioners have not provided any evidence that the "border" issues raised here, including problems related to "dead zones," are any different from issues that arise under other circumstances where one licensee is adjacent to another. Finally, turning to our obligation to attempt to avoid mutual exclusivity when it is in the public interest, we do not believe that Congress intended us to interpret the term "threshold qualifications" in Section 309(j)(6)(E) to mean that carriers should receive licenses for unserved areas without competitive bidding simply because they already hold certain licenses for other areas in the vicinity, particularly because the result of such an approach would be to preclude the dissemination of licenses to new entrants.

4. Basic Exchange Telecommunications Radio Systems (BETRS) Licensees

28. **Background.** Basic Exchange Telecommunications Radio Systems (BETRS) are licensed under the Rural Radiotelephone Service. BETRS use two-way paired channels to provide basic exchange telephone service to remote rural areas of the country.¹⁰⁷ Only local exchange carriers (LECs) that are state certified to provide basic exchange telephone service, or others having state approval to provide such service, are eligible to hold authorizations for BETRS.¹⁰⁸ The *Second Report and Order and Further Notice* directs that BETRS and Rural Radiotelephone Service licensees be subject to geographic area licensing, and also allows providers in these services to obtain site licenses on a secondary basis.¹⁰⁹ It further provides that all existing BETRS operating on a co-primary basis remain in place and receive full

¹⁰⁵ See *infra* ¶¶ 66-70.

¹⁰⁶ See *infra* ¶ 50.

¹⁰⁷ Basic Exchange Telecommunications Radio Service, *Report and Order*, 3 FCC Rcd 214, 217, ¶ 27 (1988). We note that under section 22.757 of the Commission's rules, 47 C.F.R. § 22.757, certain channels in the 800 MHz band are available on a co-primary basis to BETRS.

¹⁰⁸ 47 C.F.R. § 22.702.

¹⁰⁹ *Second Report and Order and Further Notice*, 12 FCC Rcd at 2752-54, ¶¶ 32-36. We initially decided against using auctions to resolve mutual exclusivity between initial BETRS or Rural Radiotelephone applications and common carrier mobile service applications because it would not serve the public interest to establish BETRS as a potentially low-cost alternative to wireline service, and then require BETRS applicants to bid against a radio common carrier applicant for the same channels. *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2356, ¶ 46. Following the release of the *Competitive Bidding Second Report and Order*, however, we expanded our rules to permit CMRS licensees the flexibility to provide fixed or mobile services, or a combination, over CMRS spectrum. Amendment of the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Services, *First Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 8965, 8977, ¶ 24 (1996). In light of this new flexibility, we noted that the local exchange service offered by BETRS would one day be offered by wireless and wireline providers, and that "it may not be logical to continue to exempt BETRS from geographic area licensing and auctions." *Second Report and Order and Further Notice*, 12 FCC Rcd at 2752, ¶ 32.

protection from interference by geographic area licensees.¹¹⁰ BETRS licensees may also enter into partitioning agreements with auction participants and auction winners both before and after the paging auction.¹¹¹ In the *Second Report and Order*, the Commission stated that "[i]f a geographic area licensee is concerned that a BETRS facility operating on secondary sites may cause interference to the geographic area licensee's existing or planned facilities, the BETRS provider must discontinue use of the interfering channel no later than six months after the geographic area licensee notifies the BETRS provider of the actual or potential interference."¹¹² This policy is codified at section 22.723 of our rules.¹¹³

29. **Discussion.** Several petitioners argue that BETRS is essential to the Commission's universal service goal of delivering local exchange service to remote, rural areas and should be licensed on a site-by-site, co-primary basis with geographic area licensees, and exempt from competitive bidding procedures.¹¹⁴ These petitioners contend that participation in auctions will impair the financial ability of rural telephone companies to respond to their customers' needs for local exchange service in remote rural areas and that it is impracticable for a rural telephone company or a consortium of rural telephone companies to bid on BETRS spectrum in a market the size of an EA.¹¹⁵ Petitioners also cast doubt on the ability of potential competitors like broadband PCS and cellular to provide viable and cost-effective alternatives to BETRS for the provision of telephone service to rural areas.¹¹⁶

¹¹⁰ *Id.* at 2753, ¶ 34.

¹¹¹ *Id.* at 2753, ¶ 35.

¹¹² *Id.* at 2753-54, ¶ 35.

¹¹³ 47 C.F.R. § 22.723.

¹¹⁴ Big Bend Telephone Company, Inc. Petition for Reconsideration (Big Bend Petition) at 2, 5-7; Century Telephone Enterprises, Inc. Petition for Reconsideration (Century Petition) at 2, 5-7; Lincoln County Telephone System, Inc. Petition for Reconsideration (Lincoln Petition) at 2, 5-7; Mid-Rivers Telephone Cooperative, Inc. Petition for Reconsideration (Mid-Rivers Petition) at 2, 5-7; Petition for Reconsideration of the National Telephone Cooperative Association (NTCA Petition) at 5-6; Reply to Oppositions to Petition for Reconsideration of the National Telephone Cooperative Association (NTCA Reply) at 2; Nucla-Naturita Telephone Company Petition for Reconsiderations (Nucla-Naturita Petition) at 2 & 5-7.

¹¹⁵ Big Bend Petition at 2, 4 & 7 n.8; Big Bend Telephone Company, Inc. Reply to Opposition and Comments on Petitions for Reconsideration (Big Bend Reply) at 2; Century Petition at 2, 4 & 7 n.8; Century Telephone Enterprises, Inc. Reply to Opposition and Comments on Petitions for Reconsideration (Century Reply) at 2; Lincoln Petition at 2, 4 & 7 n.8; Mid-Rivers Petition at 2, 4 & 7 n.8; Mid-Rivers Telephone Cooperative, Inc. Reply to Opposition and Comments on Petitions for Reconsideration (Mid-Rivers Reply) at 2; NTCA Petition at 3, 6; Nucla-Naturita Petition at 2, 4 & 7 n.8; Nucla-Naturita Reply to Opposition and Comments on Petitions for Reconsideration (Nucla-Naturita Reply) at 2. Big Bend states that "[u]nlike paging carriers, who will generally be interested in only a single channel at the auction, BETRS licensees would be required to bid on many frequencies in a particular market to acquire sufficient spectrum to meet present and future demands for local exchange telephone service, even though at least some of these frequencies may not be put to use immediately, if at all." Big Bend Reply at 3-4. Big Bend further explains that EAs are impracticable service areas because they "include both urbanized and rural areas, and thus, large areas which would not require construction of BETRS facilities." *Id.* at 4.

¹¹⁶ Big Bend Petition at 2-4; Century Petition at 2-4; Lincoln Petition at 2-4; Mid-Rivers Petition at 2-4; NTCA Petition at 3; Nucla-Naturita Petition at 2-4.

30. After a thorough review of the record in this proceeding, we decline to adopt rules that permit site-by-site licensing of BETRS on a co-primary basis with geographic area paging licensees. We agree that BETRS provide an important service, and none of the actions we take today have the effect of abolishing BETRS. In the *Second Report and Order*, we directed that all existing BETRS remain in place and receive full interference protection from geographic area licensees.¹¹⁷ However, we also find that BETRS licensees should be allowed to compete at auction with other BETRS licensees and wireless providers. The Commission has determined that BETRS do not require exemption from competition to ensure continued BETRS service and lower costs to subscribers. In fact, the rules that we adopted in the *Second Report and Order* provide competitive bidding benefits to small businesses that will enable them to compete more effectively with larger auction participants.¹¹⁸ We also believe that BETRS operators will be able to obtain interests in paging licenses or actual paging licenses through entering into partitioning arrangements both before and after the paging auction.¹¹⁹ We emphasize that we are committed to promoting service in rural areas and we believe that the rules adopted for BETRS in the *Second Report and Order* will further that goal. If a BETRS operator demonstrates that it cannot serve a particular need in a rural area under these rules, we will consider appropriate action to address specific concerns.¹²⁰

31. Petitioners further contend that, contrary to the Commission's universal service goals, section 22.723 of our rules will allow geographic area licensees to terminate BETRS upon any allegation of harmful co-channel interference, resulting in a loss of communications services essential to the public in rural areas. Petitioners argue that the Commission must either retain existing rules or establish safeguards against allowing geographic area licensees to "shut down BETRS operations."¹²¹ ProNet, however, seeks clarification that section 22.723 confers no right on rural radio service licensees to continue operations that cause actual interference to geographic area licenses for six months after receiving notice of the interference.¹²² We have no reason to believe that geographic area licensees will make unsupported allegations of potential or actual interference by BETRS, as petitioners suggest. We therefore

¹¹⁷ *Second Report and Order and Further Notice*, 12 FCC Rcd at 2753, ¶ 34.

¹¹⁸ *Id.* at 2804-20, ¶¶ 163-201; *see infra* at ¶ 114 (explaining that BETRS licensees also may qualify for financial benefits from the Rural Electrification Administration and universal service support).

¹¹⁹ *See Second Report and Order and Further Notice*, 12 FCC Rcd at 2753, ¶ 35 (the Commission's partitioning rules are tailored to accommodate future expansion of BETRS by "allow[ing] BETRS licensees to enter into partitioning agreements with geographic area licensees both before and after geographic licensing occurs"). Paging providers may obtain partitioned licenses by: (1) forming bidding consortia to participate in auctions, and then partitioning licenses won among consortium members; or (2) acquiring partitioned licenses from other licensees through private negotiation and agreement either before or after the auction. *Id.* at 2817, ¶ 194.

¹²⁰ We note that there has not been much recent activity in licensing Rural Radiotelephone Services, which includes BETRS. We have received only 16 new or major modification applications for Rural Radiotelephone licenses between January 1, 1998, and May 1, 1999.

¹²¹ Big Bend Petition at 5; Big Bend Reply at 6-8; Century Petition at 5; Century Reply at 6-8; Lincoln Petition at 5; Mid-Rivers Petition at 5; Mid-Rivers Reply at 6-8; NTCA Petition at 5-7; Nucla-Naturita Petition at 5; Nucla-Naturita Reply at 6-8.

¹²² ProNet Inc. Petition for Reconsideration and Clarification (ProNet Petition) at 20; ProNet Comments on Petitions for Reconsideration at 15.

affirm our earlier decision to allow BETRS licensees to obtain site licenses and operate facilities on a secondary basis. We clarify, however, that under section 22.723 of our rules, the geographic area licensee must provide notification to the BETRS provider that the relevant BETRS facility causes or will cause interference with the geographic area licensee's service contour in violation of our interference rules.¹²³

32. Petitioners argue that the Commission has exceeded its statutory authority by using competitive bidding procedures to issue geographic area paging licenses because the use of auctions to assign paging spectrum is motivated purely by the Commission's desire to raise federal revenues.¹²⁴ We have not exceeded our statutory authority by employing competitive bidding procedures to issue geographic area paging licenses. Section 309(j) of the Communications Act, as amended, gives the Commission authority to issue geographic area paging licenses through competitive bidding.¹²⁵ Petitioners have offered no evidence to support their assertion that revenue for the federal treasury "appears to be the real reason for the Commission's proposal."¹²⁶ Our reasons for adopting competitive bidding procedures for paging licenses are set forth at length in the *Notice and Second Report and Order and Further Notice*, and these reasons do not include revenue-enhancing considerations. We stated that geographic area licensing would enhance regulatory symmetry between one-way paging and narrowband PCS, streamline the regulatory procedures and application processing rules, and result in a broader array of entities providing paging services to the public.¹²⁷ Moreover, Congress has charged us to promote: (1) development and rapid deployment of new technologies, products, and services; (2) economic opportunity and competition; (3) recovery of a portion of the value of the public spectrum; and (4) efficient and

¹²³ Where the BETRS facility would create interference with a facility the geographic area licensee is proposing to build, the geographic area licensee may not provide notification of impermissible interference to the BETRS provider earlier than six months prior to the date it intends to initiate operation of the proposed facility. Thus, the geographic area licensee may not force the BETRS provider to discontinue service before the geographic area licensee initiates service. Where the BETRS facility is constructed after the geographic area licensee's facility is already constructed and the BETRS facility causes interference with that existing facility, the BETRS operator must discontinue use of the interfering channel in accordance with our interference rules. Where a geographic area licensee plans construction and initially determines that the BETRS facility would not cause interference, but after construction determines the BETRS facility is causing interference, the BETRS operator must discontinue use of its facility within six months of receiving notification. If a dispute arises, either party may submit the interference information to the Commission to resolve the dispute. If the geographic area licensee provides proper notification to the BETRS provider, no adjustments will be made to the initial six month period. If the Commission determines that the notification was improper or inaccurate, the geographic area licensee, where appropriate, must submit a new, corrected notification to the BETRS provider. In the latter case, the six month period would restart.

¹²⁴ Big Bend Petition at 4-5; Century Petition at 4-5; Lincoln Petition at 4-5; Mid-Rivers Petition at 4-5; Nucla-Naturita Petition at 4-5.

¹²⁵ See 47 U.S.C. § 309(j)(2)(A), (B) & (C). As previously noted, the Commission's mandate to employ competitive bidding was broadened by the Balanced Budget Act of 1997. See *supra* at ¶ 9 (citing the Balanced Budget Act of 1997, Pub. L. No. 105-33, § 3002, 111 Stat. 251 (1997) (amending 47 U.S.C. § 309(j))); see also *Fresno Mobile Radio, Inc. v. FCC*, No. 978-1459 (D.C. Cir. Feb. 5, 1999); and *BBA NPRM*.

¹²⁶ Big Bend Petition at 4; Century Petition at 4; Lincoln Petition at 4; Mid-Rivers Petition at 4; Nucla-Naturita Petition at 4.

¹²⁷ *Second Report and Order and Further Notice*, 12 FCC Rcd at 2776, ¶ 85; *Notice*, 11 FCC Rcd at 3113, ¶ 21.

intensive use of the electromagnetic spectrum.¹²⁸ The recovery of a portion of the value of the public spectrum made available through competitive bidding does not amount to maximizing revenue, nor is it our sole objective. Petitioners have not articulated any persuasive reason for us to reconsider our findings on this point.

33. Petitioners also argue that the Commission did not adequately consider adopting "mandatory partitioning" of rural areas of the geographic area license, at no cost to the rural telephone company, to offset the unwillingness of geographic area licensees to enter into agreements for the provision of BETRS service.¹²⁹ PCIA and ProNet maintain, however, that mandatory partitioning is unnecessary because BETRS providers are permitted to enter into voluntary arrangements with winning geographic area licensees.¹³⁰ AirTouch and PCIA contend that no cost, mandatory partitioning is contrary to the public interest and would come at the expense of geographic area licensees.¹³¹ We affirm our conclusion in the *Second Report and Order and Further Notice* that BETRS licensees may acquire partitioned licenses from other licensees by: (1) participating in bidding consortia; or (2) acquiring partitioned licenses from other licensees through private negotiation and agreement either before or after the auction.¹³² We have no reason to believe that auction winners will not be willing to enter into partitioning arrangements. Petitioners themselves argue that winning geographic area licensees may have no desire or intention to build in rural areas.¹³³ If this is true, there appears to be little incentive for these licensees to demand unreasonable amounts of money for the rural portion of a license prior to or subsequent to the auction, especially if the choice is between selling to a willing buyer or leaving the rural area unserved.¹³⁴ Where possible, the Commission encourages market forces and the business judgment of companies to dictate the formation of business relationships. For example, we have expressed our preference for allowing market forces to encourage voluntary agreements between broadband PCS licensees and rural telephone companies to accomplish partitioning.¹³⁵ We believe such voluntary

¹²⁸ See 47 U.S.C. § 309 (j)(3)(A), (B), (C) & (D) (1998).

¹²⁹ Big Bend Petition at 7-9; Big Bend Reply at 4-5; Century Petition at 7-9; Century Reply at 4-5; Lincoln Petition at 7-9; Mid-Rivers Petition at 7-9; Mid-Rivers Reply at 4-5; Nucla-Naturita Petition at 7-9; Nucla-Naturita Reply at 4-5.

¹³⁰ Reply Comments of the Personal Communications Industry Association (PCIA Reply Comments) at 7-8; ProNet, Inc. Reply Comments on Further Notice of Proposed Rulemaking (ProNet Reply Comments) at 9-10.

¹³¹ AirTouch Comments on Petitions for Reconsideration at 21-22; The Personal Communications Industry Association Opposition to and Comments on Petitions for Reconsideration (PCIA Opposition) at 4; see PCIA Reply Comments at 7.

¹³² *Second Report and Order and Further Notice*, 12 FCC Rcd at 2817-18, ¶ 194.

¹³³ Big Bend Petition at 3, 9; Century Petition at 3, 9; Lincoln Petition at 3, 9; Mid-Rivers Petition at 3, 9; Nucla-Naturita Petition at 3, 9.

¹³⁴ Big Bend, for example, asserts that in the absence of mandatory partitioning rules, geographic area licensees will likely demand excessive amounts of money for partitioned licenses in rural areas. Big Bend Petition at 9 n.11.

¹³⁵ See, e.g., *Geographic Partitioning and Spectrum Disaggregation by Commercial Mobile Radio Services Licensees, Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 21831, 21844, ¶ 16 (1996) (*Partitioning and Disaggregation Report and Order and Further Notice*) (rejecting rural telephone companies' argument that they will not be able to compete for partitioned PCS licenses unless the Commission restricts

agreements will be an adequate means of accommodating BETRS licensees seeking modifications to existing BETRS or wishing to establish new systems, and that mandatory partitioning is unnecessary.

5. Spectrum Reversion

34. **Background.** In the *Second Report and Order and Further Notice*, we concluded that spectrum within a geographic area recovered by the Commission from a non-geographic area licensee should automatically revert to the geographic area licensee.¹³⁶ We found that granting this right to geographic area licensees would give them greater flexibility in managing their spectrum, establish greater consistency with our cellular and PCS rules, and reduce the regulatory burdens on both licensees and the Commission with respect to future management of the spectrum.¹³⁷

35. **Discussion.** ProNet suggests that the Commission should clarify that under the spectrum reversion rule adopted in the *Second Report and Order and Further Notice*, recovered spectrum automatically reverts to the geographic area licensee in all instances except where an incumbent licensee discontinues operations in a location wholly encompassed by the incumbent licensee's valid composite interference contours.¹³⁸ ProNet argues that the geographic area licensee would not be able to serve such an area, and that reversion would be contrary to the Commission's policy of allowing fill-in transmitters anywhere within the incumbent's outer perimeter interference contour.¹³⁹ We disagree. As an initial matter, we note that an incumbent's valid composite interference contour does not include areas surrounded by the composite interior contour that is not part of the interference contours of the incumbent's individual sites. ProNet has not demonstrated that a geographic area licensee would be unable to serve areas wholly surrounded by an incumbent; such service by the geographic area licensee would be subject to our interference rules. Moreover, where an incumbent discontinues service to an area, we do not believe it serves the public interest to withhold that area from the geographic area licensee in the hope that the incumbent may wish to resume service sometime in the future. Should an incumbent desire to serve the reverted area in the future, it is free to reach an agreement with the geographic area licensee for the partitioning of this area. This approach is consistent with our treatment of reverted spectrum in the 800 MHz SMR service,¹⁴⁰ and it is in the public interest, as it promotes use of the spectrum. Therefore, we reaffirm that where an incumbent permanently discontinues operations at a given site, as defined by our rules,¹⁴¹ the spectrum automatically reverts to the geographic area licensee.

partitioning solely to rural telephone companies as contrary to Commission policy of encouraging competition).

¹³⁶ *Second Report and Order and Further Notice*, 12 FCC Rcd at 2745, ¶ 18.

¹³⁷ *Id.*

¹³⁸ ProNet Petition at 8; ProNet Comments on Petitions for Reconsideration at 8; see AirTouch Comments on Petitions for Reconsideration at 16-17 (supporting ProNet's arguments).

¹³⁹ *Id.*

¹⁴⁰ See 800 MHz Memorandum Opinion and Order on Reconsideration, 12 FCC Rcd at 9982-83, ¶¶ 27-29.

¹⁴¹ See 47 C.F.R. § 22.317.

6. System-wide Licensing

36. **Background.** In the *Second Report and Order and Further Notice*, we allowed all incumbent paging licensees to either continue operating under existing authorizations or trade in their site-specific licenses for a single system-wide license. We stated that such a system-wide license would be demarcated by the aggregate of the interference contours around each of the incumbent licensee's contiguous sites operating on the same channel.¹⁴² We also concluded that incumbent licensees may add or modify sites within their existing interference contours without filing site-specific applications, but may not expand their existing interference contours without the consent of the geographic area licensee.¹⁴³

37. **Discussion.** Although system-wide licenses and site-specific licenses are identical in terms of operational and technical flexibility, some licensees may realize administrative benefits from consolidating site-specific licenses. Petitioners seek clarification of the procedures for converting site-specific licenses to a system-wide license.¹⁴⁴ In the *ULS Order*, the Commission stated that conversions from site-specific to system-wide licenses are minor modifications subject to the Commission's prior approval.¹⁴⁵ Applicants requesting a system-wide license will be notified by public notice of the action taken on their request and public notices granting such requests will indicate the new call sign associated with the system-wide license. The expiration date of the system-wide license will be determined by the earliest expiration date of the site-specific licenses that are consolidated into the system-wide license. Once a system-wide license is approved, the licensee must submit a timely renewal application for the system-wide license based on that expiration date. We emphasize, however, that the licensee is solely responsible for filing timely renewal applications for site-specific licenses included in a system-wide license request until the request is approved. If the situation arises where a site-specific renewal application for a site included in a system-wide license request and the system-wide license request itself are pending at the same time before the Bureau, the Bureau may elect to complete the site-specific license renewal proceeding prior to making a determination on the system-wide license request. Renewal applications will be placed on public notice as accepted for filing pursuant to our rules. To minimize administrative burdens on licensees and conserve government resources, the Bureau intends to use electronic filing to the greatest extent possible in accepting and processing these applications.¹⁴⁶

¹⁴² *Second Report and Order and Further Notice*, 12 FCC Rcd at 2764, ¶ 58.

¹⁴³ *Id.*; see Wireless Telecommunications Bureau clarifies Interim Licensing Rules Applicable to Addition of Internal Sites by 929 MHz Nationwide Licensees, *Public Notice*, 11 FCC Rcd 11632 (1996).

¹⁴⁴ Metrocall Petition at 22-23; Morris Petition at 11; Nationwide Petition at 11.

¹⁴⁵ Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97 and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Service, *Report and Order*, 13 FCC Rcd 21027, 21060, ¶ 72 (1998) (*ULS Report and Order*); see also 47 C.F.R. § 1.929 (k)(7). We note that we inadvertently omitted codifying the requirement that conversions to system-wide licenses are subject to Commission approval. We will amend section 1.947 of our rules accordingly upon reconsideration of the *ULS Report and Order*.

¹⁴⁶ See, e.g., Wireless Telecommunications Bureau Announces New Procedures for Filing Part 22 Paging Applications in Universal Licensing System (ULS) Starting July 1, 1998, *Public Notice*, DA 98-989 (May 22, 1998).

38. Several petitioners seek clarification of the definition of "contiguous sites" for the purpose of determining an incumbent's "aggregate interference contour."¹⁴⁷ Blooston asks whether service contours or interference contours must overlap to meet the definition of "contiguous sites."¹⁴⁸ PageNet asserts that contiguous sites are defined by overlapping service area contours.¹⁴⁹ Petitioners also urge the Commission to modify section 503(i) to define non-geographic area incumbent systems according to the composite interference contours of all authorized transmitters, including valid construction permits, regardless of the grant date.¹⁵⁰ PageNet and Arch oppose the inclusion of expired construction permits in determining composite interference contours.¹⁵¹ We have consistently stated that system-wide licenses are defined by interference contours¹⁵² and we now clarify that contiguous sites are defined by overlapping interference contours, not service contours. We further clarify that all authorized site-specific paging licenses and construction permits are included in a composite interference contour. We are continuing to process site-specific applications that were not mutually exclusive and were filed prior to July 31, 1996, and we will not revoke authorized construction permits before the construction deadline. In addition, we are continuing to resolve pending petitions that might result in grants of applications.¹⁵³ We also note that for purposes of due diligence we intend to release, prior to auction, a list of site-specific applications and petitions pending at that time. Accordingly, we amend section 503(i) to clarify that geographic area licensees must provide co-channel interference protection in accordance with sections 22.537 or 22.567, as appropriate for the channel involved, to all authorized co-channel facilities of exclusive licensees within the paging geographic area.¹⁵⁴

¹⁴⁷ Blooston Petition at 8-9; Metrocall Petition at 22-23; Morris Petition at 11; Nationwide Petition at 11; ProNet Petition at 3 & 18; AirTouch Comments on Petitions for Reconsideration at 15-16; Arch Reply at 8-9.

¹⁴⁸ Blooston Petition at 9.

¹⁴⁹ Paging Network, Inc. Reply to Oppositions and Comments Regarding Certain Petitions for Reconsideration and Clarification (PageNet Reply) at 6-7.

¹⁵⁰ AirTouch Comments on Petitions for Reconsideration at 16; ProNet Petition at 3-6; ProNet Comments on Petitions for Reconsideration at 7-8; ProNet Reply at 4; Schuylkill Petition at 3-4; Western Paging Petition at 3-4.

¹⁵¹ Arch Reply at 7; Paging Network, Inc. Comments in Opposition of Certain Petitions for Reconsideration and Clarification (PageNet Opposition) at 8; PageNet Reply at 9.

¹⁵² *Second Report and Order and Further Notice*, 12 FCC Rcd at 2764, ¶ 58; *Notice*, 11 FCC Rcd at 3116, ¶ 37; *800 MHz Second Report and Order*, 12 FCC Rcd at 19106, ¶ 72; *800 MHz Memorandum Opinion and Order*, 12 FCC Rcd at 9992, ¶ 63; *Wireless Telecommunications Bureau Clarifies Definition of Interference Contour for Interim Paging Rules, Public Notice*, 11 FCC Rcd 11509 (1996); *Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rulemaking*, 11 FCC Rcd 1463, 1514, ¶ 88 (1995) (*800 MHz Report and Order*).

¹⁵³ For example, the resolution of pending petitions for reconsideration of grants of site-by-site paging applications might result in new grants of site-specific licenses. In addition, as previously stated, we will resolve in separate orders a number of petitions for reconsideration of the *CWD Order* dismissing pending mutually exclusive applications that have raised arguments as to whether the subject applications were in fact mutually exclusive with other applications. Again, these petitions could result in grants of site-specific licenses. See *supra* at note 53 and accompanying text.

¹⁵⁴ See *infra* at ¶ 48 (further clarification of section 22.503(i)).

39. Petitioners also contend that system-wide licenses should include areas where an incumbent's interference contours do not overlap, but where no other licensee could place a transmitter because of interference rules.¹⁵⁵ We conclude that a system-wide license is merely a consolidation of a system's call signs such that one call sign will be associated with the system-wide license. The contours of the system-wide license remain as the aggregate of the contours of the individual sites. We find that inclusion of areas that are outside of an incumbent's interference contours within a system-wide license would be contrary to our objective of prohibiting encroachment on the geographic area licensee's operations. As we explained for our 900 MHz SMR service¹⁵⁶ and reiterated in the *Second Report and Order and Further Notice*,¹⁵⁷ our objective is to allow incumbents to continue existing operations without harmful interference and to give them the flexibility to modify or augment their systems so long as they do not encroach upon the geographic area licensee's operations. At the same time, a system-wide license is not intended to expand an incumbent's system beyond the contours of its individual sites. Incumbent licensees seeking to expand their contours may participate in the auction of geographic area licenses, or may seek partitioning agreements with the geographic area licensee.

40. Blooston seeks clarification as to whether the discontinuance of operation of an interior site would jeopardize a system-wide license.¹⁵⁸ Where a system-wide licensee allows an area within its system to revert to the geographic area licensee, the system-wide license shall remain intact; however, the parameters of the system-wide license shall be amended to the demarcation of the remaining contiguous interference contours.

41. ProNet asserts that incumbents should be permitted to include remote transmitters linked to contiguous systems via control/repeater facilities or by satellites within their system-wide licenses, or in the alternative should be allowed to maintain separate licenses for any remote, stand-alone transmitters.¹⁵⁹ We agree. We will allow licensees to include in system-wide licenses remote, stand-alone transmitters that are linked to contiguous systems via control/repeater facilities or by satellites. Including these remote, stand-alone sites in the system-wide license, however, in no way expands the licensee's composite interference contours. We will also permit licensees to maintain separate site-specific licenses for remote, stand-alone transmitters. We believe that this will reduce unnecessary regulatory burdens on licensees, reduce administrative costs on the industry, and thereby benefit consumers. We further find that an incumbent licensee should be permitted to obtain multiple system-wide licenses where applicable.

¹⁵⁵ Blooston Petition at 8-9; Metrocall Petition at 22-23; Morris Petition at 11; Nationwide Petition at 11; ProNet Petition at 3 & 18; AirTouch Comments on Petitions for Reconsideration at 15-16; Arch Reply at 8-9.

¹⁵⁶ Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and the 935-940 MHz Bands Allotted to the Specialized Mobile Radio Pool, *Second Report and Order and Second Further Notice of Proposed Rulemaking*, 10 FCC Rcd 6884, 6901, ¶ 47 (1995).

¹⁵⁷ *Second Report and Order and Further Notice*, 12 FCC Rcd at 2764, ¶ 57.

¹⁵⁸ Blooston Petition at 9.

¹⁵⁹ ProNet Petition at 8-9; ProNet Comments on Petitions for Reconsideration at 9.

C. Interference

1. Co-Channel Interference Protection for Incumbent Licensees

42. **Background.** Co-channel interference rules are designed to protect licensees from interference caused by other licensees operating facilities on the same channel. Exclusive paging systems are protected from co-channel interference by a variety of rules that govern transmitter height and power, distance between transmission stations, the licensee's protected service area, and the field strength of the licensee's service and interfering signals.¹⁶⁰ For the CCP channels below 931 MHz, we use mathematical formulas to determine the distance from each transmitting site to its service and interference contours along the eight cardinal radials from the transmitter site.¹⁶¹ To determine service and interference contours for the 931 MHz channels, we use two tables of fixed radii, Tables E-1 and E-2.¹⁶² Prior to adoption of the *Second Report and Order and Further Notice*, for the 929 MHz exclusive channels, we used geographic separation rules that agreed with the separations that result from the application of the fixed radii tables for 931 MHz.¹⁶³ Unlike our CCP rules, at that time, our PCP rules did not formally define a protected service or interference contour for each station.¹⁶⁴

43. In the *Notice*, we proposed to adopt the eight-radial contour method and new mathematical formulas, rather than fixed tables, to determine the service and interference contours for the exclusive 929 MHz and 931 MHz channels.¹⁶⁵ We found that using these formulas would more reasonably predict potential interference to incumbents and provide geographic area licensees with greater flexibility in placing their facilities.¹⁶⁶ The commenters addressing this issue strenuously objected to our proposal, stating that our proposed method could require incumbents to reduce coverage or be required to accept interference from geographic area licensees.¹⁶⁷ Consequently, we decided not to adopt the proposed formulas.¹⁶⁸ We did, however, adopt Tables E-1 and E-2 for the exclusive 929 MHz and 931 MHz

¹⁶⁰ *Second Report and Order and Further Notice*, 12 FCC Rcd at 2768, ¶ 66 (citing *Notice*, 11 FCC Rcd at 3119, ¶ 46).

¹⁶¹ *Second Report and Order and Further Notice*, 12 FCC Rcd at 2768, ¶ 67; 47 C.F.R. §§ 22.537 & 22.567. The lower band CCP channels are located at 35-36 MHz, 43-44 MHz, 152-159 MHz, and 454-460 MHz.

¹⁶² *Second Report and Order and Further Notice*, 12 FCC Rcd at 2768, ¶ 67 (citing 47 C.F.R. § 22.537(e) & (f)).

¹⁶³ *Id.* (citing 47 C.F.R. § 90.495(b)(2)(1996)).

¹⁶⁴ *See Notice*, 11 FCC Rcd at 3120, ¶ 54.

¹⁶⁵ *Id.* at 3119-20, ¶¶ 49-55.

¹⁶⁶ *Id.* at 3119, ¶ 50.

¹⁶⁷ *Second Report and Order and Further Notice*, 12 FCC Rcd at 2768-69, ¶ 68.

¹⁶⁸ *Id.* at 2769; ¶ 69.

channels, thus maintaining the *status quo* for 931 MHz channels and conforming 929 MHz channels to the current procedures for 931 MHz channels.¹⁶⁹

44. **Discussion.** Several petitioners now request that instead of using Tables E-1 and E-2, we permit incumbents to employ alternative formulas to determine the interference contours of "fill-in" transmitters.¹⁷⁰ PageNet suggests using signal strength criteria, rather than alternative formulas, for determining the interference contours of "fill-in" transmitters.¹⁷¹ We do not find that permitting incumbents to use different formulas for "fill-in" transmitters will serve the public interest. The record in this proceeding supports our decision to use Tables E-1 and E-2 to determine interference and service contours for all 929 MHz and 931 MHz transmitters.¹⁷² We find that to permit incumbents to add sites under alternative formulas depending on the location and power of each of their transmitters significantly raises the risk of encroachment on a geographic area licensee's territory.¹⁷³ In addition, the incumbent will have the opportunity to cover any existing gaps in coverage by either competing for the geographic area license or by partitioning from the geographic area licensee. Thus, we affirm our earlier decision to use Tables E-1 and E-2 to determine interference contours for both perimeter and "fill-in" transmitters.

2. Adjacent Geographic Area Licensees

45. **Background.** In the *Notice*, we sought comment on a geographic area licensee's obligations to resolve possible interference concerns of adjacent geographic area licensees by: (1) reducing the signal level at the service area boundary; or (2) negotiating a mutually acceptable agreement with the neighboring geographic area licensee.¹⁷⁴ In the *Second Report and Order and Further Notice*, we concluded that geographic area licensees should be able to negotiate mutually acceptable agreements with

¹⁶⁹ *Id.*

¹⁷⁰ AirTouch Comments on Petitions for Reconsideration at 17; Arch Petition at 2-5; Arch Opposition at 1-3; Blooston Petition at 9-10; Blooston, Mordkofsky, Jackson & Dickens Reply to Oppositions and Comments on Petitions for Reconsideration (Blooston Reply) at 7-8; ProNet Petition at 9-18; ProNet Comments on Petitions for Reconsideration at 10-12; Reply of ProNet Inc. (ProNet Reply) at 7-8. Fill-in transmitters are "[t]ransmitters added to a station, in the same area and transmitting on the same channel or channel block as previously authorized transmitters, that do not expand the existing service area, but are established for the purpose of improving reception in dead spots." 47 C.F.R. § 22.99.

¹⁷¹ PageNet Reply at 3-6. PageNet initially opposed petitioners' proposals of alternative formula, arguing that they would only lead to litigation between incumbents and geographic area licensees. PageNet Opposition at 11-12.

¹⁷² *Second Report and Order and Further Notice*, 12 FCC Rcd at 2769, ¶ 69.

¹⁷³ Tables E-1 and E-2 provide both the geographic area licensee and incumbent licensee with an objective standard for determining where they can place their transmitters without causing interference. As we stated in the *Second Report and Order*, formulas would, in most cases, reduce the service area and composite interference contour that incumbent licensees have relied on in developing their systems to date. *Second Report and Order and Further Notice*, 12 FCC Rcd at 2769, ¶ 69. Further, formulas may underestimate the actual reliable coverage of paging systems. *Id.*

¹⁷⁴ *Notice*, 11 FCC Rcd at 3121, ¶ 62.

all adjacent geographic area licensees if their interfering contours extend into other geographic areas.¹⁷⁵ We also indicated that adjacent licensees have a duty to negotiate in good faith with one another regarding co-channel interference protection. We noted that lack of adequate service to the public because of failure to negotiate reasonable solutions with adjacent geographic area licensees could reflect negatively on licensees seeking renewal.¹⁷⁶

46. **Discussion.** Certain parties now seek clarification of the good faith negotiation requirement, arguing the standard is vague and invites litigation.¹⁷⁷ Blooston further notes that while the cellular industry has negotiated agreements, paging coordination will be more difficult because paging carriers operate on only one frequency, while cellular carriers have many channels with which to negotiate.¹⁷⁸ The *Second Report and Order and Further Notice* adopted the good faith standard to provide flexibility for licensees to negotiate mutually acceptable agreements. Thus, adjacent geographic area licensees have a duty to negotiate with each other in good faith regarding co-channel interference protection when an interfering contour extends into an adjacent geographic area or areas. Providing for adjacent geographic area licensees to negotiate mutually acceptable agreements should reduce the amount of unserved area that could result from specifying a minimum distance a geographic area licensee's transmitter must be from a geographic border.¹⁷⁹ In other services, such as the Multipoint Distribution Service (MDS), we have expected licensees to cooperate among themselves to resolve interference issues before bringing them to the attention of the Commission.¹⁸⁰ Based on the limited number of interference complaints that the Commission has been called upon to resolve, we believe this policy has worked well in the MDS service. Moreover, none of the parties have proposed a better way to achieve flexibility and the reduction of unserved areas. We therefore affirm our previous conclusion.

3. Channel Exclusivity

47. **Background.** Prior to 1993, all PCP channels were assigned on a non-exclusive basis. In 1993, the Commission established rules allowing PCP carriers in the 929-930 MHz band to obtain channel exclusivity as local, regional, and nationwide paging systems on thirty-five of the forty 929 MHz PCP channels.¹⁸¹ Those licensees that qualified for exclusivity as a local, regional, or nationwide system at that time were grandfathered as exclusive licensees, and required to maintain their existing sharing arrangements with other licensees, but were protected from the addition of other licensees on these

¹⁷⁵ *Second Report and Order and Further Notice*, 12 FCC Rcd at 2771, ¶ 73.

¹⁷⁶ *Id.*

¹⁷⁷ Airtouch Comments on Petitions for Reconsideration at 18; Blooston Petition at 17; ProNet Petition at 23.

¹⁷⁸ Blooston Petition at 17.

¹⁷⁹ *Second Report and Order and Further Notice*, 12 FCC Rcd at 2771, ¶ 73.

¹⁸⁰ *See* 47 C.F.R. § 21.902(a) & (b).

¹⁸¹ Amendment of the Commission's Rules to Provide Channel Exclusivity to Qualified Private Paging Systems at 929-930 MHz, *Report and Order*, 8 FCC Rcd 8318 (1993) (*PCP Exclusivity Order*). The five remaining channels continued to be licensed on a shared basis. *Id.*

channels.¹⁸² Thus, no application for a new paging site would be granted on a channel assigned to an incumbent who qualified for exclusivity if the applicant proposed a paging facility that did not comply with the separation standards based on antenna height and transmitter power of the respective systems.¹⁸³ All other incumbent licensees were grandfathered with respect to their existing systems as shared licensees, and required to continue to share channels with each other.¹⁸⁴ We note that grandfathered licensees could not add stations to their existing systems in areas where a co-channel licensee had qualified for exclusivity.¹⁸⁵ Therefore, on these thirty-five 929 MHz channels, we have: (1) exclusive incumbents: grandfathered exclusive systems that are exclusive with respect to new licensees, but share with other grandfathered licensees; (2) non-exclusive incumbents: grandfathered shared licensees; (3) licensees who failed to construct enough sites to qualify for exclusivity under the *PCP Exclusivity Order* (considered "secondary" with respect to licensees with earned exclusivity); and (4) licensees with earned exclusivity. In the *Second Report and Order and Further Notice*, we concluded that geographic area licensees must provide co-channel protection to all incumbent licensees.¹⁸⁶

48. **Discussion.** PCIA, PageNet, and ProNet seek clarification as to whether non-exclusive 929 MHz licensees operating on the thirty-five exclusive channels (*i.e.*, categories 2 and 3 in the above paragraph) will receive the same interference protection as an exclusive licensee.¹⁸⁷ AirTouch and Arch seek clarification that the Commission did not elevate incumbent licensees operating on shared channels to exclusive status.¹⁸⁸ PageNet specifically argues that section 22.503(i) will require that nationwide geographic area licensees terminate sharing arrangements they have with non-exclusive licensees and provide interference protection to them.¹⁸⁹ API, however, contends that section 22.503(i) does not require the termination of existing channel sharing arrangements involving exclusive incumbent licensees and non-exclusive incumbent licensees.¹⁹⁰ Non-exclusive incumbent licensees on the thirty-five exclusive 929 MHz channels will continue to operate under the same arrangements established with the exclusive incumbent licensees and other non-exclusive incumbent licensees prior to the adoption of the *Second Report and Order and Further Notice*. We further clarify that MEA, EA, and nationwide geographic area licensees will be able to share with non-exclusive incumbent licensees on a non-interfering shared basis. The non-

¹⁸² *Id.* at 8329, ¶ 31.

¹⁸³ *Id.* at 8330, ¶ 32; *see* 47 C.F.R. § 22.537. We note that no application would be granted on a channel where a licensee qualified for nationwide exclusivity.

¹⁸⁴ *PCP Exclusivity Order*, 8 FCC Rcd at 8329, ¶ 31.

¹⁸⁵ *Id.* at 8330, n.66. Even where expansion was not allowed, however, we allowed grandfathered licensees to make minor modifications needed to maintain an existing system (*e.g.*, relocation of a transmitter upon expiration of site lease). *Id.*

¹⁸⁶ *Second Report and Order and Further Notice*, 12 FCC Rcd at 2769, ¶ 69.

¹⁸⁷ PageNet Petition at 18; PageNet Opposition at 14; PageNet Reply at 1-3; PCIA Petition at 16; ProNet Petition at 24.

¹⁸⁸ Arch Petition at 8-9; Arch Reply at 5-7; AirTouch Comments on Petitions for Reconsideration at 20-21.

¹⁸⁹ PageNet Petition at 17-18.

¹⁹⁰ Comments of American Paging, Inc. (API Comments on Petitions for Reconsideration) at 4.

exclusive incumbent licensees must cooperate with the nationwide and geographic area licensees' right to share on a non-interfering shared basis. Accordingly, we amend section 22.503(i) to clarify that nationwide and geographic area licensees are afforded the right to share with non-exclusive incumbent licensees on a non-interfering shared basis. As for shared PCP channels, we concluded in the *Second Report and Order and Further Notice* that licensees on these channels will not be converted to exclusive status and that these channels will not be subject to competitive bidding.¹⁹¹ Therefore, licensees on these shared channels will continue to share with any future licensees.

4. Mobile Telephone Providers and Control Links

49. **Background.** Blooston requests that we grant full interference protection to existing control link¹⁹² operations on the UHF and VHF paired channels originally allocated for mobile telephone service once the "auction for the UHF and VHF common carrier channels" is completed.¹⁹³ Blooston contends that in reliance on the Commission's proceeding in CC Docket 87-120, which permitted paging carriers to use these two-way channels as control links, "numerous carriers have configured their paging systems on [the] basis of their protected use of a VHF or UHF frequency to link their base stations."¹⁹⁴

Consolidated requests clarification as to whether incumbent mobile telephone service providers operating on the lower paging frequencies will be protected from interference from geographic area licensees.¹⁹⁵ Furthermore, Consolidated requests that incumbent mobile telephone service providers be permitted to obtain additional site licenses on a secondary basis.¹⁹⁶

50. **Discussion.** We conclude that Blooston's request to protect control link operations is unclear and outside the scope of this proceeding. Our rules do not generally provide protection from interference to fixed stations¹⁹⁷ and Blooston's request would require a rulemaking to develop interference criteria, which is beyond the scope of this proceeding. In addition, Blooston's request is unclear. For example, Blooston does not specify whether any protection provided should apply to the mobile channel used as a control link or the base channel used as a control link. We therefore deny Blooston's request. With respect to Consolidated's request for clarification, we reiterate that geographic area licensees must

¹⁹¹ *Second Report and Order and Further Notice*, 12 FCC Rcd at 2756-58, ¶¶ 40.

¹⁹² A control link or "control transmitter" is a fixed transmitter in the Public Mobile Services that transmits control signals to one or more base or fixed stations for the purpose of controlling the operation of the base or fixed stations, and/or transmits subscriber communications to one or more base or fixed stations that retransmit them to subscribers. 47 C.F.R. § 22.99.

¹⁹³ Blooston Petition at 22.

¹⁹⁴ *Id.*

¹⁹⁵ Consolidated Petition at 10.

¹⁹⁶ *Id.*

¹⁹⁷ See 47 C.F.R. § 22.351(c)(4) (providing that "[e]xcept as provided elsewhere in this part, no protection from interference is afforded in the following situations: . . . (4) *Interference to fixed stations*. Licensees should attempt to resolve such interference by technical means or operating arrangements").