

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 22 and 90

[WT Docket No. 96-18; PP Docket No. 93-253; FCC 97-59]

#### Facilitate Future Development of Paging Systems and Implementation of Section 309(j) of the Communications Act—Competitive Bidding

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** In this *Further Notice of Proposed Rulemaking (FNPRM)*, in WT Docket No. 96-18 and PP Docket No. 93-253, the Commission seeks comment on coverage requirements for nationwide geographic area licenses, partitioning and disaggregation for geographic area paging licenses (including nationwide licenses), and the application procedure for the shared channels. The Commission seeks to eliminate or reduce paging license application fraud by providing applicants with information about the risks of telecommunications investment and the warning signs of possible investment fraud. The Commission's objective is to provide paging licensees the flexibility they need to tailor their service offerings to meet market demands and facilitate greater participation by small businesses.

**DATES:** Comments must be filed on or before April 17, 1997. Reply comments are to be filed on or before May 1, 1997.

**ADDRESSES:** Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Mika Savir, Commercial Wireless Division, Wireless Telecommunications Bureau, at (202) 418-0620, or Frank Stilwell, Auctions Division, Wireless Telecommunications Bureau, at (202) 418-0660.

**SUPPLEMENTARY INFORMATION:** This *Further Notice of Proposed Rulemaking* in WT Docket No. 96-18 and PP Docket No. 93-253, adopted on February 19, 1997 and released on February 24, 1997, is available for inspection and copying during normal business hours in the FCC Reference Center, Room 239, 1919 M Street, NW., Washington, DC 20554. The complete text may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857-3800.

Synopsis of the Further Notice of Proposed Rulemaking

#### I. Background

1. In the *Second Report and Order* in WT Docket No. 96-18, the Commission adopted rules governing geographic area licensing for paging licenses and competitive bidding procedures for auctioning mutually exclusive applications for these licenses. Further comment is needed on several issues such as coverage requirements for nationwide geographic area licenses, partitioning and disaggregation for geographic area licenses, and possible modifications to the application procedure for shared channels.

#### II. Further Notice of Proposed Rulemaking

##### A. Nationwide Channels

2. In the *Second Report and Order* in WT Docket No. 96-18, the Commission concluded that the three nationwide 931 MHz channels and twenty-three 929 MHz PCP nationwide channels will not be subject to competitive bidding. The Commission did not impose coverage requirements on the nationwide geographic area paging licenses. The Major Trading Area (MTA) and Economic Area (EA) geographic area licensees, which are not exempt from competitive bidding, are required to provide coverage to one-third of the geographic area population within three years of license grant, and to two-thirds of the geographic area population within five years of license grant. In the alternative, the MTA or EA licensee may provide substantial service to the geographic area within five years of license grant. In this *Further Notice of Proposed Rulemaking (FNPRM)*, the Commission seeks comment on whether coverage requirements should be imposed on nationwide licenses, and the appropriate coverage area. The Commission seeks comment on whether the entire nationwide license, or just a portion of the license, should be auctioned if the nationwide licensee fails to meet the coverage requirements.

##### B. Partitioning and Disaggregation

#### 1. Partitioning

##### a. In General

In the *Second Report and Order*, the Commission adopted geographic partitioning provisions for MTA and EA geographic area paging licensees. In this *FNPRM*, the Commission seeks comment on whether nationwide paging licensees should be permitted to partition their license area. Commenters should note that the three 931 MHz nationwide channels and twenty-three

929 MHz nationwide channels are not subject to competitive bidding, whereas the MTA and EA geographic area licenses are subject to competitive bidding.

4. The Commission believes that partitioning can be an effective means of providing paging licensees with the flexibility they need to tailor their service offerings to meet market demands. Partitioning may be used to create smaller licenses and thus also facilitate greater participation by small businesses and rural telephone companies. The Commission did not, however, seek comment in the *NPRM* in WT Docket No. 96-18 on the treatment of MTA and EA geographic area paging licensees that receive competitive bidding benefits, the license term of partitioned licenses, or build-out requirements. The Commission seeks comment on these issues with respect to geographic area paging licenses.

##### b. Licensees With Competitive Bidding Benefits

5. Providing licensees with the flexibility to partition their geographic service areas will create smaller areas that can be licensed to small businesses, including those entities without the resources to participate successfully in spectrum auctions. The competitive bidding rules for paging include provisions for installment payments and bidding credits for small businesses. The Commission has also adopted rules to prevent unjust enrichment by small businesses seeking to transfer licenses obtained with installment payments or bidding credits. The Commission seeks comment on how to adjust installment payments owed by partitioning licensees. Parties are invited to comment on whether a small business partitioner should be required to repay, on an accelerated basis, a portion of the outstanding principal balance owed under an installment payment plan. The Commission seeks comment on how this payment should be calculated. The Commission seeks comment on whether the partitioner should be required to guarantee payment of a portion of the partitioner's obligation.

6. The Commission tentatively concludes that partitionees that would qualify as small businesses should be permitted to pay their *pro rata* share of the remaining government obligation through installment payments. The Commission seeks comment on this tentative conclusion. Commenters should address the mechanisms for apportioning the remaining government obligation between the parties. The Commission proposes using population as the objective measure to calculate the

relative value of the partitioned area, and seeks comment on this proposal.

7. The Commission proposes applying unjust enrichment rules to small businesses that partition to non-small businesses or to small businesses qualifying for a lower bidding credit. The Commission seeks comment on this proposal. These unjust enrichment provisions would include accelerated payment of bidding credits, unpaid principal, and accrued unpaid interest. The Commission seeks comment on how such unjust enrichment amounts should be calculated. Commenters should address how to calculate unjust enrichment amounts and how to enforce unjust enrichment payments. The Commission seeks comment on whether the price paid by the partitionee should be considered in determining the percentage of the outstanding principal balance to be repaid. Commenters should address whether the unjust enrichment payments should be calculated on a proportional basis, using population of the partitioned area as the objective measure.

8. The Commission seeks comment on whether each party to a partitioning transfer should be required to guarantee all or a portion of the partitioner's original auctions-related obligation in the event of default or bankruptcy by any of the parties to the partitioning transfer. The Commission seeks comment on whether the partitioner (the original licensee) should continue to be responsible, with respect to the auctions-related obligation, for the entire initial geographic area.

#### c. Build-out requirements

9. In the *Second Report and Order*, the Commission adopted coverage requirements for MTA and EA geographic area licensees. Specifically, each MTA or EA geographic area licensee must provide coverage to one-third of the geographic area population within three years of the license grant, and to two-thirds of the geographic area population within five years of the license grant. In the alternative, the MTA or EA licensee may provide substantial service to the geographic area within five years of license grant. The Commission tentatively concludes that both the partitioner and the partitionee should be subject to coverage requirements that ensure that both portions of the license area will receive service. The Commission proposes that a partitionee will be obligated to satisfy the same build-out requirements as the original licensee within its partitioned area, regardless of when the license was acquired. A partitionee of an MTA or EA would

provide coverage to one-third of the population in its partitioned area within three years of the license grant, and to two-thirds of the population within its partitioned area within five years of the license grant. In the alternative, the partitionee may provide substantial service to the partitioned geographic area within five years of license grant. Parties are invited to comment on this proposal. Commenters should also address build-out requirements for partitioned nationwide licenses. Commenters are also invited to address what build-out requirements should apply where a licensee partitions a portion of its license area after the initial ten-year license term has expired.

#### d. License term

10. A geographic area paging licensee is authorized to provide service for no more than ten years from the date of license grant. A licensee may submit an application to renew the license for an additional license term, and is afforded a renewal expectancy if it can demonstrate that it has provided substantial service during the past license term and has substantially complied with the applicable Commission rules, policies, and the Communications Act. Substantial service is service which is sound, favorable, and substantially above a mediocre level of service which might just minimally warrant renewal.

11. The Commission proposes that a partitionee (including a nationwide license partitionee) be authorized to hold its license for the remainder of the partitioner's original ten-year term. The Commission tentatively concludes that this approach is reasonable because a partitioner-licensee should not be able to confer greater rights than it was awarded under the terms of its license grant. The Commission seeks comment on this tentative conclusion. The Commission also proposes that a partitionee be afforded the same renewal expectancy as a geographic area licensee. The Commission proposes to grant a partitionee a preference at a renewal proceeding if it can demonstrate that it has provided substantial service during its past license term and has substantially complied with the applicable Commission rules, policies, and the Communications Act. The Commission seeks comment on these proposals.

#### 2. Disaggregation

##### a. In General

12. In the NPRM, the Commission asked parties to comment on whether paging spectrum disaggregation should

be allowed. The Commission did not receive sufficient comment on this issue to adopt disaggregation for paging services. The Commission seeks further comment on the feasibility of spectrum disaggregation for paging. Commenters should provide technical justifications and other relevant support in responding to this issue. Commenters should address whether minimum disaggregation standards are necessary for paging services. Commenters should also address whether nationwide licensees should be permitted to disaggregate spectrum.

##### b. Licensees With Competitive Bidding Benefits

13. The Commission also seeks comment on what the respective obligations of the participants in a disaggregation transfer should be, and whether each party should be required to guarantee a proportionate amount of the disaggregator's original auctions-related obligation in the event of default or bankruptcy by any of the parties to the disaggregation transfer. The Commission seeks comment on whether the disaggregator (the original licensee) should have a continuing obligation with respect to the entire initial license. Alternatively, should the parties have available a choice of options, ranging from an accelerated payment based on purchase price to a guarantee for a larger payment by one party in the event another party defaults? Parties are invited to comment on whether the disaggregating parties should be able to determine which party has a continuing obligation with respect to the original license area.

14. The Commission proposes to allow all small business licensees to disaggregate to similarly qualifying parties as well as parties not eligible for small business provisions. The Commission tentatively concludes that if a qualified small business licensee is permitted to disaggregate to a non-small business entity, the disaggregating licensee should be required to repay any benefits it received from the small business special provisions on a proportional basis. This would include accelerated payment of bidding credits, unpaid principal, and accrued unpaid interest. The Commission seeks comment on how such repayment amounts should be calculated. The Commission also seeks comment on whether we should consider the price paid by the disaggregatee in determining the percentage of the outstanding principal balance to be repaid.

15. The Commission tentatively concludes that if a small business licensee is permitted to disaggregate to

another qualified small business that would not qualify for the same level of bidding credit as the disaggregating licensee, the disaggregating licensee should be required to repay a portion of the benefit it received. The Commission seeks comment on how that amount should be calculated. Finally, the Commission seeks comment on what provisions, if any, should be adopted to address the situation of a small business licensee's disaggregation followed by default in payment of a winning bid at auction.

#### c. Build-Out Requirements

16. The Commission requires each MTA or EA geographic area licensee to provide coverage to one-third of the geographic area population within three years of the license grant, and to two-thirds of the geographic area population within five years of the license grant. In the alternative, the MTA or EA licensee may provide substantial service to the geographic area within five years of license grant. The Commission proposes adopting a flexible approach for construction requirements on both the disaggregator and disaggreatee for their respective spectrum portions. The Commission proposes that either the disaggregator or the disaggreatee entering the geographic market should be obligated to provide coverage to one-third of the population within three years of the license grant, and to two-thirds of the population within five years of the license grant. In the alternative, either the disaggregator or the disaggreatee may provide substantial service to the geographic area within five years of license grant. The Commission seeks comment on this proposal. Commenters should also address the appropriate build-out requirements for the parties to disaggregation of nationwide paging licenses. The Commission proposes that if a licensee fails to meet the construction requirements, the license reverts back to the Commission. The Commission seeks comment on this proposal.

#### d. License Term

17. The Commission proposes a similar license term for disaggregation as for partitioning, *i.e.*, a disaggreatee would be authorized to hold its license for the remainder of the disaggregator's original ten-year license term. The Commission proposes that a disaggreatee would be afforded a renewal expectancy if it can demonstrate that it has provided substantial service during the past license term and has substantially complied with the applicable

Commission rules, policies, and the Communications Act. The Commission seeks comment on these proposals, and on how to apply the renewal standard in cases where the disaggreatee has acquired the disaggregated license near the end of the license term.

#### 3. Combination of Partitioning and Disaggregation

18. The Commission tentatively concludes that combinations of partitioning and disaggregation should be permitted, subject to the rules proposed for each. The Commission seeks comment on this proposal. Commenters should address any conflicts in the partitioning and disaggregation rules and whether the Commission should implement the partitioning rules in such cases. Commenters should also address whether the Commission should allow the combination of partitioning and disaggregation for nationwide paging licenses.

#### C. Shared Channels

19. The issue of paging license application fraud was initially raised in the comments filed by the Federal Trade Commission (FTC). According to the FTC, telecommunications investment frauds are of two basic types: (1) "Application mills," where telemarketers sell application preparation services for wireless licenses for thousands of dollars to consumers, by claiming that telecommunications businesses will seek to lease or sell the licenses for many times the telemarketers' applications fees; and (2) "build-out" schemes, where telemarketers sell, again for thousands of dollars, interests in limited liability companies or partnerships that supposedly will acquire wireless licenses, build and operate telecommunications systems, and pay the consumers high dividends. The FTC argued that awarding licenses on a geographic basis through competitive bidding would likely reduce the incidence of "application mills" for paging licenses. The FTC explained that awarding licenses on an unlimited, shared basis is especially prone to abuse, because the constant availability of such licenses allows telemarketers to guarantee licenses to unsuspecting consumers. The transition of the exclusive paging channels to geographic area licensing might make the shared channels even more inviting to the fraudulent application mills. The Commission seeks comment on how to eliminate or reduce this problem.

20. Specifically, the Commission seeks comment on how the current FCC

Form 600 application could be revised to provide applicants with information regarding the risks of telecommunications investment and warning signs of possible investment fraud. In addition, the Commission seeks comment on whether application preparation services should be required to sign the FCC Form 600, and to certify that the applicant has received in writing pertinent information regarding the Commission's rules and the obligations of licensees. Commenters are also invited to address whether PCIA should be required to implement additional procedures in the coordination process to reduce fraudulent or speculative applications.

#### II. Conclusion

21. The Commission believes that the proposals in the *FNPRM* will provide paging licensees the flexibility needed to tailor their service offerings to meet market demands, and facilitate greater participation by small businesses. Additionally, a revision to the application process for shared channels to provide applicants with information regarding the risks of telecommunications investment and the warning signs of possible investment fraud may reduce fraudulent or speculative applications.

#### III. Procedural Matters and Ordering Clauses

##### A. Regulatory Flexibility Act

###### Summary

22. As required by section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the policies and rules proposed in this *FNPRM*. Written public comments on the IRFA are requested.

###### Reason for Action

23. This rulemaking proceeding in WT Docket No. 96-18 was initiated to secure comment on proposals for establishing a regulatory scheme for the common carrier paging (CCP) and private carrier paging (PCP) services which would promote efficient licensing and competition in the commercial mobile radio marketplace. The Commission seeks further comment on several issues: whether nationwide licenses should be subject to coverage requirements, how bidding credits and installment payments should be treated in cases where small businesses wish to partition their licenses, how build-out requirements and license term are affected in cases of geographic partitioning by paging market area

licensees, whether spectrum disaggregation is feasible for paging licensees, and revisions to the current FCC Form 600 and the application procedures for licenses on the shared channels to reduce paging application fraud.

#### Objectives

24. The *Second Report and Order* grants 26 nationwide geographic area licenses to nationwide paging licensees, but does not impose any additional coverage beyond what the nationwide licensees have already achieved. In the *FNPRM*, the Commission seeks comment on whether coverage requirements are appropriate.

25. In the *Second Report and Order* the Commission allows all licensees, including small business licensees, to partition at any time to another eligible entity. In the *FNPRM* the Commission proposes that unjust enrichment provisions should apply when a small business licensee has benefitted from the small business provisions in the auction rules and then partitions a portion of the license area to another entity that would not qualify for such benefits, or would qualify for a lower bidding credit. Without the unjust enrichment provisions on such transactions, a small business could benefit from special bidding provisions and then become unjustly enriched by immediately partitioning a portion of the license area to parties that do not qualify for such benefits. The objective of this proposal is to prevent unjust enrichment.

26. In the *FNPRM* the Commission seeks comment on build-out requirements and license term for partitioned geographic area licenses (including nationwide licenses). The Commission also seeks comment on whether nationwide licensees should be permitted to partition their license area, build-out requirements for partitioned nationwide licenses, and the license term of partitioned nationwide licenses.

27. In the *FNPRM* the Commission seeks comment on whether spectrum disaggregation would be feasible for paging, and how much spectrum a paging licensee should be permitted to disaggregate. The Commission seeks comment on build-out requirements and license term for disaggregated geographic area licenses. If spectrum disaggregation is feasible in paging it may facilitate the efficient use of spectrum, increase competition, and expedite service to the public.

28. The Commission also seeks comment on paging application fraud, an issue raised by the Federal Trade Commission. Specifically, the

Commission seeks comment on whether the current FCC Form 600 should be revised to warn paging applicants of the risk of application fraud, and whether application preparation services should be required to certify that the applicant has received information regarding the Commission's rules and the obligations of licensees. Additionally, commenters are invited to address whether the frequency coordinator should implement additional procedures to reduce fraudulent or speculative paging applications. The objective of these proposals is to inform consumers of the rules and the prevalence of paging application fraud and thus reduce fraud and speculation.

#### Legal Basis

29. The proposed action is authorized under sections 4(i), 257, 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 257, 303(r), and 309(j).

#### Reporting, Recordkeeping, and Other Compliance Requirements

30. *Nationwide Channels*. The proposals in the *FNPRM* include the possibility of imposing reporting and recordkeeping requirements for the nationwide geographic area licensees to establish compliance with the coverage requirements, if coverage requirements are adopted.

31. *Geographic Partitioning and Spectrum Disaggregation*. The proposals in the *FNPRM* include the possibility of imposing reporting and recordkeeping requirements for small businesses seeking licenses through the proposed partitioning and disaggregation rules. The information requirements would be used to determine if the licensee is a qualifying entity to obtain a partitioned license or disaggregated spectrum. This information will be a one-time filing by any applicant requesting such a license. The information will be submitted on the FCC Forms 490 (or 430 and/or 600 filed as one package under cover of the Form 490) which are currently in use and have already received OMB clearance. The Commission estimates that the average burden on the applicant is three hours for the information necessary to complete these forms. The Commission estimates that 75 percent of the respondents (which may include small businesses) will contract out the burden of responding. The Commission estimates that it will take approximately 30 minutes to coordinate information with those contractors. The remaining 25 percent of respondents (which may include small businesses) are estimated to employ in-house staff to provide the information. Applicants (including

small businesses) filing the package under cover of FCC Form 490 electronically will incur a \$2.30 per minute on-line charge. On-line time would amount to no more than 30 minutes. The Commission estimates that 75 percent of the applicants may file electronically. The Commission estimates that applicants contracting out the information would use an attorney or engineer (average of \$200 per hour) to prepare the information.

32. It is also possible that small business partitioners and disaggregators will be required to repay, on an accelerated basis, a portion of the outstanding principal balance owed under an installment payment plan. If unjust enrichment rules are applied to small businesses that partition or disaggregate to non-small businesses, or to small businesses qualifying for a lower bidding credit, small businesses may be required to reimburse the United States government for all or a portion of the special competitive bidding benefits they have received. This could include accelerated payment of bidding credits, unpaid principal, and accrued unpaid interest. It is also possible that each party to a partitioning or disaggregation transfer could be required to guarantee all or a portion of the partitioner's or disaggregator's original auctions-related obligation in the event of default or bankruptcy by any of the parties.

33. *Shared Channels*. The proposals in the *FNPRM* do not include the possibility of imposing reporting and recordkeeping requirements for small businesses seeking licenses for shared channels. The *FNPRM* seeks comment on whether the current FCC Form 600 application should be revised to warn applicants of the risk of application fraud; whether application preparation services should be required to certify that the applicant has received information regarding the Commission's rules; and whether the frequency coordinator should be required to implement additional procedures in the coordination process to reduce the likelihood of fraudulent applications. These proposals would, if implemented, furnish additional information to applicants. None of these proposals would impose reporting or recordkeeping requirements on small businesses.

#### Federal Rules Which Overlap, Duplicate or Conflict With These Rules

34. None.

#### Description and Number of Small Entities Involved

35. *Nationwide Channels*. The rule changes discussed in the *FNPRM* with

respect to implementing coverage requirements for the 26 nationwide licenses will probably not directly affect small businesses because nationwide licensees are probably not small businesses. However, if all 26 nationwide licenses are held by small businesses, the rule change would not affect more than 26 small businesses.

36. *Geographic Partitioning and Spectrum Disaggregation.* The partitioning and disaggregation rule changes proposed in this proceeding will affect all small businesses which avail themselves of these rule changes, including small businesses currently holding paging licenses who choose to partition and/or disaggregate and small businesses who may acquire licenses through partitioning and/or disaggregation.

37. The Commission is required to estimate in its *Final Regulatory Flexibility Analysis* the number of small entities to which a rule will apply, provide a description of such entities, and assess the impact of the rule on such entities. To assist the Commission in this analysis, commenters are requested to provide information regarding how many total entities, existing and potential, would be affected by the proposed rules in the *FNPRM*. In particular, the Commission seeks estimates of how many such entities, existing and potential, will be considered small businesses. The Small Business Administration (SBA) has not developed a definition of small business specifically applicable to paging. The closest applicable definition under the SBA rules is radiotelephone (wireless) companies. According to the SBA's definition, a small business radiotelephone company is one employing fewer than 1,500 persons. The Commission seeks comment on whether this definition is appropriate for paging licensees in this context. Additionally, the Commission requests each commenter to identify whether it is a small business under this definition. If a commenter is a subsidiary of another entity, this information should be provided for both the subsidiary and the parent corporation or entity.

38. The Commission estimates that up to approximately 50,000 licensees or potential licensees could take the opportunity to partition and/or disaggregate a license or obtain a license through partitioning and/or disaggregation. This number is based on the total geographic area licenses to be awarded (approximately 16,600) and an estimate that each license will probably not be partitioned and/or disaggregated to more than three parties. Given the fact that nearly all radiotelephone companies have fewer than 1,000

employees, and that no reliable estimate of the number of future paging licensees can be made, the Commission assumes for purposes of this IRFA that all of the licenses will be awarded to small businesses. It is possible that a significant number of the up to approximately 50,000 licensees or potential licensees who could take the opportunity to partition and/or disaggregate a license or who could obtain a license through partitioning and/or disaggregation will be small businesses.

39. *Shared Channels.* The rule changes proposed in the *FNPRM* with respect to warning prospective applicants about paging application fraud would probably not have an impact on any small business or other entity applying for a paging license on a shared channel. The proposed changes to the paging license application are intended to warn consumers about the prevalence of application fraud.

Significant Alternatives Minimizing the Impact on Small Entities Consistent With the Stated Objectives

40. The Commission seeks comment on whether coverage requirements should be imposed for the nationwide geographic area licensees. Any significant alternatives presented in the comments will be considered. Coverage requirements for the nationwide geographic area licensees, if adopted, would probably not affect small businesses.

41. With respect to partitioning, the Commission seeks comment on whether nationwide licensees should be permitted to partition their license area, build-out requirements for partitioned nationwide licenses, and license term of partitioned nationwide licenses. For MTA and EA geographic area licenses, the Commission proposes that unjust enrichment provisions should apply when a licensee has benefitted from the small business provisions in the auction rules and partitions a portion of the geographic license area to another entity that would not qualify for such benefits. The alternative to applying the unjust enrichment provisions would be to allow an entity who had benefitted from the special bidding provisions for small businesses to become unjustly enriched by partitioning a portion of their license area to parties that do not qualify for such benefits. The Commission also seeks comment on build-out requirements and license term for partitioned MTA and EA geographic area licenses.

42. The Commission seeks comment on whether spectrum disaggregation would be feasible for paging, and how much spectrum a paging licensee

should be permitted to disaggregate. The Commission seeks comment on build-out requirements and license term for disaggregated geographic area licenses. If spectrum disaggregation is feasible in paging it may facilitate the efficient use of spectrum, increase competition, and expedite service to the public.

43. The Commission also seeks comment on an issue raised by the Federal Trade Commission in comments regarding paging application fraud. Specifically, the Commission seeks comment on whether the current FCC Form 600 should be revised to warn applicants of the risk of application fraud, and whether application preparation services should be required to certify that the applicant has received information regarding the Commission's rules and the obligations of licensees. Commenters are invited to address whether the frequency coordinator should implement additional procedures to reduce fraudulent or speculative paging applications. The alternative to revising the application and/or the coordination process could permit application mill fraud which may affect many unwitting consumers.

44. The *FNPRM* solicits comment on a variety of alternatives discussed herein. Any significant alternatives presented in the comments will be considered.

#### *B. Paperwork Reduction Act*

45. This *FNPRM* contains either a proposed or modified information collection. As part of its continuing effort to reduce paperwork burdens, the Commission invites the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this *FNPRM* as required by the Paperwork Reduction Act of 1995, Pub. L. 104-13. Public and agency comments are due at the same time as other comments on this *FNPRM*; OMB notification of action is due May 12, 1997. Comments should address (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

46. *Dates:* Written comments by the public on the proposed information

collections are due April 11, 1997. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collections on or before May 12, 1997.

47. *Addresses:* In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Dorothy Conway, Federal Communications Commission, Room 234, 1919 M Street, NW., Washington, DC 20554, or via the Internet to [dconway@fcc.gov](mailto:dconway@fcc.gov), and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725-17th Street, NW., Washington, DC 20503 or via the Internet to [fain\\_t@al.eop.gov](mailto:fain_t@al.eop.gov).

48. *Further Information:* For additional information concerning the information collections contained in this *NPRM* contact Dorothy Conway at (202) 418-0217, or via the Internet at [dconway@fcc.gov](mailto:dconway@fcc.gov).

49. *Supplementary Information:*  
*Title:* Revision of part 22 and part 90 of the Commission's rules to Facilitate Future Development of Paging Systems and Implementation of section 309(j) of the Communications Act—Competitive Bidding

*Type of Review:* New Collection.

*Respondents:*

*Number of Respondents:* We estimate that approximately 50,000 licensees or potential licensees could take the opportunity to partition or disaggregate a license or obtain a license through partitioning or disaggregation.

*Estimated Time Per Response:* The average burden on the applicant is 3 hours for the information necessary to complete FCC Forms 490 or 430 and 600 filed under cover of the FCC Form 490. We estimate that 75 percent of the respondents will contract out the burden of responding. We estimate that it will take approximately 30 minutes to coordinate information with those contractors. The remaining 25 percent of respondents are estimated to employ in-house staff to provide the information.

37,500 applicants (contracting out) × .5 hour = 18,750 hours  
12,500 applicants (in-house) × 3 hours = 37,500 hours  
Total burden = 18,750 + 37,500 = 56,250 hours.

*Estimated Cost to the Respondent:*  
Total capital and start-up costs:

Applicants wishing to file the package under cover of the FCC Form 490 electronically will incur a \$2.30 per minute on-line charge. On-line time would amount to no more than 30 minutes. Seventy-five percent of applicants are expected to file electronically.

37,500 applications × \$2.30 × 30 = \$2,587,500

All other respondents are expected to file manually and would incur the following costs:

12,500 applications × \$1.15 = \$14,375  
Total capital and start-up costs = \$2,587,500 + \$14,375 = \$2,601,875.

We assume that the respondents contracting out the information would use an attorney or engineer (average \$200 per hour) to prepare the information.

37,500 applications × \$200 per hour × 3 hours = \$22,500,000

Total respondent costs: \$2,601,875 + \$22,500,000 = \$25,101,875

*Cost to the Federal Government:* The government review time per response for this submission is estimated at 15 minutes per response with review being done by personnel at the GS-6 level.

50,000 applications × \$3.39 = \$169,500

#### C. *Ex Parte Presentations—Non-Restricted Proceeding*

50. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in the Commission's rules. See generally 47 CFR 1.1202, 1.1203, 1.1206(a).

#### D. *Comment Period*

51. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before April 17, 1997. Reply comments are to be filed on or before May 1, 1997. To file formally in this proceeding, you must file an original and four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original and nine copies. Comments

and reply comments should be sent to Office of the Secretary, Federal Communications Commission, 1919 M Street, NW., Room 222, Washington, DC 20554. Parties should also submit two copies of comments and reply comments to Bobby Brown, Commercial Wireless Division, Wireless Telecommunications Bureau, 2025 M Street, NW., Room 7130, Washington, DC 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, Room 239, 1919 M Street, NW., Washington, DC 20554.

#### E. *Authority*

52. Authority for issuance of this *Further Notice of Proposed Rulemaking* is contained in sections 4(i), 257, 303(r), and 303(j) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), 257, 303(r), and 303(j).

#### F. *Ordering Clauses*

53. Accordingly, it is ordered that, pursuant to the authority of sections 4(i), 257, 303(r), and 303(j) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), 257, 303(r), and 303(j), a *Further Notice of Proposed Rulemaking* is hereby adopted.

54. It is further ordered that comments in WT Docket No. 96-18 will be due April 17, 1997 and reply comments will be due May 1, 1997.

#### List of Subjects

##### 47 CFR Part 22

Communications common carriers, Reporting and recordkeeping requirements.

##### 47 CFR Part 90

Common carriers, Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

*Acting Secretary.*

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