

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)	

ORDER

Adopted: November 13, 2001

Released: November 14, 2001

By the Deputy Chief, Commercial Wireless Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. Under the Commission's current interim licensing rules for lower band shared paging channels and the five 929 MHz shared paging channels (Shared Paging Channels), incumbent licensees may file applications for new sites at any location. Non-incumbent entities may file applications on these Shared Paging Channels, but only for private, internal-use systems. In its *Third Report and Order* in this proceeding, the Commission directed the Wireless Telecommunications Bureau (Bureau) to remove these interim licensing rules as applied to Shared Paging Channels once warning language about the consequences of failing to meet construction requirements had been added to FCC Form 601, the Application for Wireless Telecommunications Bureau Radio Service Authorization.¹ Having added the language to FCC Form 601, by this Order, we remove the Commission's interim licensing rules with respect to filing applications for licenses at new sites on the Shared Paging Channels. Any qualified entity may submit applications for licenses on these channels at any location, effective upon publication of this Order in the Federal Register.

II. INTERIM LICENSING RULES AND FCC FORM 601 FRAUD-WARNING LANGUAGE

2. In early 1996, the Commission suspended acceptance of new applications for paging channels during the pendency of its rulemaking proceeding to establish geographic area licensing and competitive bidding rules for paging services.² Mindful, however, that an across-the-board freeze on applications might impair the ability of licensees to maintain adequate services for their customers, the Commission established interim licensing rules initially permitting non-nationwide incumbent licensees

¹ *In re* Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, WT Docket No. 96-18, *Memorandum Opinion and Order on Reconsideration and Third Report and Order*, 14 FCC Rcd 10030, 10113, ¶ 164, 10115, ¶ 167 (1999) (*Third Report and Order*).

² *In re* Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, WT Docket No. 96-18, *Notice of Proposed Rulemaking*, 11 FCC Rcd 3108, 3136, ¶ 139 (1996) (*Notice*). Channels allocated on a nationwide exclusive basis were exempt from this restriction. *Id.* at 3137, ¶ 142.

to add sites to existing systems or modify existing sites, provided the additions or modifications did not expand the composite interference contour of the licensee's existing system.³

3. Later that same year, in its *First Report and Order*, the Commission affirmed its decision to maintain the freeze on paging applications and to retain the interim licensing rules.⁴ The Commission, in large part, based its decision to maintain the freeze and, specifically, the limitation on incumbent applications under the interim licensing rules on its concern that lifting the freeze or allowing non-incumbents to file applications on either exclusive frequencies or the Shared Paging Channels would lead to a flood of speculative applications and increase opportunities for application mills to promote fraudulent investment schemes.⁵ The Commission, however, did relax the interim licensing rules to allow non-nationwide incumbent licensees on exclusive frequencies or the Shared Paging Channels to file applications for new sites outside the licensee's composite interference contour. Proposed sites that would expand a service area contour had to be located within forty (40) miles of a site for which the licensee had filed an application.⁶ The Commission further exempted Special Emergency Radio Service providers from the paging freeze, allowing those providers to file applications on the Shared Paging Channels.⁷

4. In 1997, in the *Second Report and Order and Further Notice of Proposed Rulemaking*, the Commission concluded that the Shared Paging Channels should not be subject to geographic area licensing or competitive bidding procedures.⁸ Still concerned about consumer fraud and license application speculation on those channels,⁹ however, the Commission sought comment on how to change licensing and frequency coordination procedures to resolve the problems of consumer fraud and speculative applications.¹⁰ Pending resolution of these issues, and out of caution, the Commission required new applications filed for the Shared Paging Channels to continue to be processed under the interim licensing rules.¹¹ The Commission, however, again relaxed the interim licensing rules by eliminating the 40-mile requirement and allowing incumbents to file for new sites on the Shared Paging

³ *Notice*, 11 FCC Rcd at 3136, ¶ 140.

⁴ *In re Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems*, WT Docket No. 96-18, *First Report and Order*, 11 FCC Rcd 16570, 16581, ¶ 19 (1996) (*First Report and Order*).

⁵ *First Report and Order*, 11 FCC Rcd at 16581, ¶ 19, 16584, ¶ 27, 16585-86, ¶¶ 30-32.

⁶ *First Report and Order*, 11 FCC Rcd at 16583, ¶ 26, *modified on reconsideration*, 11 FCC Rcd 7409, 7411, ¶ 4 (1996). Under this 40-mile requirement, the application for the original site must have been filed as of September 30, 1995. *Order on Reconsideration of the First Report and Order*, 11 FCC Rcd at 7411, ¶ 4.

⁷ *First Report and Order*, 11 FCC Rcd at 16588, ¶ 38.

⁸ *In re Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems*, WT Docket No. 96-18, *Second Report and Order and Further Notice of Proposed Rulemaking*, 12 FCC Rcd 2732, 2756-57, ¶¶ 40-42 (1997) (*Second Report and Order and Further Notice of Proposed Rulemaking*).

⁹ *Second Report and Order and Further Notice of Proposed Rulemaking*, 12 FCC Rcd at 2756-57, ¶¶ 40-42.

¹⁰ *Second Report and Order and Further Notice of Proposed Rulemaking*, 12 FCC Rcd at 2757, ¶ 43, 2826, ¶¶ 219-220.

¹¹ *Second Report and Order and Further Notice of Proposed Rulemaking*, 12 FCC Rcd at 2737, ¶ 2, 2757, ¶ 43. More specifically, the Commission determined that all pending mutually exclusive applications would be dismissed; all non-mutually exclusive applications filed on or before July 31, 1996, would be processed; and all applications, other than applications on nationwide frequencies and the Shared Paging Channels, filed after July 31, 1996, would be dismissed. *Id.* at 2737, ¶ 2. *See also* FCC Clarifies Processing of License Applications Under Interim Licensing Paging Rules, *Public Notice*, 11 FCC Rcd 7032 (1996) (stating that the Bureau would process all applications filed through July 31, 1996, under the interim licensing rules and determine how applications filed after that date would be processed based on the timing of the final order in this proceeding).

Channels at any location.¹² The Commission also affirmed its decision to allow new applicants to file applications for private, internal-use systems.¹³ While the interim licensing rules as developed in Commission decisions apply to all of the Shared Paging Channels, the *Second Report and Order* specifically revised Section 90.494(g) of the Commission's rules to reflect the interim licensing rules for purposes of the five 929 MHz shared paging channels.¹⁴

5. In the *Third Report and Order*, the Commission considered the many comments filed on the issue of application fraud. In response, it determined that adding language to FCC Form 601 warning applicants that failure of a licensee to meet construction or coverage requirements would result in termination of the license would be generally helpful to applicants in all services and might also help deter fraud.¹⁵ The Commission directed the Bureau to remove the interim licensing rules for the Shared Paging Channels, including Section 90.494(g) of its rules, once the warning language was added to FCC Form 601.¹⁶

III. LIFTING THE FREEZE ON APPLICATIONS FOR LICENSES ON THE SHARED PAGING CHANNELS

6. As of November 9, 2001, the following warning language has been added near the signature block on the FCC Form 601 application in Universal Licensing System (ULS), as well as the FCC Form 601 available through Fax-on-Demand and the Bureau's website:

Upon grant of this license application, the licensee may be subject to certain construction or coverage requirements. Failure to meet the construction or coverage requirements will result in termination of the license. Consult appropriate FCC regulations to determine the construction or coverage requirements that apply to the type of license requested in this application.

7. We have initiated the process for printing new paper copies of FCC Form 601 that contain the warning language, but those copies will not be available to the public for several weeks. As already noted, where paper copies of FCC Form 601 may be used or are needed, updated applications containing the warning language can be obtained from Fax-on-Demand (202-418-2830) or are currently available for downloading from <http://www.fcc.gov/wtb/csinfo/orderfrm.html>.¹⁷ We also note that applications for new licenses on Shared Paging Channels must be filed through certified land mobile frequency coordinators. We have provided the updated version of FCC Form 601 to each coordinator and have encouraged them to point out the new warning language to applicants for the Shared Paging Channels.

¹² *Second Report and Order and Further Notice of Proposed Rulemaking*, 12 FCC Rcd at 2757, ¶ 43.

¹³ *Second Report and Order and Further Notice of Proposed Rulemaking*, 12 FCC Rcd at 2757, ¶ 43.

¹⁴ *Second Report and Order and Further Notice of Proposed Rulemaking*, 12 FCC Rcd at 2856. Section 90.494(g) states that "[l]icenses may be granted on these shared paging channels [929.0375, 929.0625, 929.0875, 929.1625, 929.2625] only for expansion (addition of new sites or relocation of existing sites) or other modification, assignment or transfer of control of existing, licensed private (including Special Emergency Radio Service) or commercial paging systems, and for new private (including Special Emergency Radio Service), internal-use paging systems. Any application for authority to operate a new commercial paging system on any of these shared channels is unacceptable for filing." 47 C.F.R. § 90.494(g).

¹⁵ *Third Report and Order*, 14 FCC Rcd at 10113, ¶ 164.

¹⁶ *Third Report and Order*, 14 FCC Rcd at 10115, ¶ 167.

¹⁷ The FCC Form 601 is also available from <http://www.fcc.gov/wtb/formpage.html>.

8. Having added the warning language to FCC Form 601, we eliminate the interim licensing rules that have applied to lower band shared paging channels and the five 929 MHz shared paging channels. Accordingly, pursuant to the *Third Report and Order*, we remove the interim licensing rules developed through Commission decisions as well as Section 90.494(g) of the Commission's rules as applied to the Shared Paging Channels.¹⁸ Any qualified entity may file an application for a license on the Shared Paging Channels for new sites at any location, effective upon publication of this Order in the Federal Register. Applications for new sites filed on these Shared Paging Channels continue to require frequency coordination prior to filing the applications with the Commission.

IV. PROCEDURAL MATTERS AND ORDERING CLAUSES

9. Accordingly, IT IS ORDERED pursuant to Sections 4(i), 303(r), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), 332, and the *Third Report and Order*, that the Commission's interim licensing rules as applied to the Shared Paging Channels ARE ELIMINATED and Section 90.494(g) of the Commission's rules, 47 C.F.R. § 90.494(g), IS REMOVED as set forth in Appendix A.

10. IT IS FURTHER ORDERED that this action is taken pursuant to the *Third Report and Order* and the authority delegated in Section 0.331 of the Commission's rules, 47 C.F.R. § 0.331.

11. IT IS FURTHER ORDERED that the provisions of this *Order* and the Commission's rules, as amended in Appendix A, SHALL BECOME EFFECTIVE upon publication of this *Order* in the Federal Register in accordance with Section 1.103 of the Commission's rules, 47 C.F.R. § 1.103.

FEDERAL COMMUNICATIONS COMMISSION

Katherine M. Harris
Deputy Chief, Commercial Wireless Division
Wireless Telecommunications Bureau

¹⁸ *Third Report and Order*, 14 FCC Rcd at 10117, ¶ 178.

APPENDIX A

Part 90 of Chapter 1 of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 90 continues to read as follows:

AUTHORITY: Section 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

§ 90.494 [Amended]

2. Paragraph (g) of Section 90.494 is removed.