



PUBLIC NOTICE

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GUIDANCE ON COMPLIANCE WITH CONSTRUCTION REQUIREMENTS FOR AUCTION 95 PAGING AND RADIOTELEPHONE SERVICE LICENSES

By this *Public Notice*, the Wireless Telecommunications Bureau's Mobility Division offers guidance on compliance with the three-year and five-year construction requirements, as well as compliance with the Commission's substantial service requirements at the five-year construction deadline, for Upper and Lower Paging Band licenses won in Auction 95. Auction 95 licensees must demonstrate next month that they have satisfied construction requirements for over three thousand licenses.¹ Our goal is to facilitate rapid review of these filings and reduce the number of notifications that staff must return for additional information.

Construction Notification Filings

Pursuant to Section 22.503(k) of the Commission's rules, a licensee must construct and operate sufficient facilities to cover one-third of the population in its paging geographic area no later than three years after the initial grant of its license.² In addition, no later than five years after the initial license grant, a licensee must construct and operate sufficient facilities to cover two-thirds of the population in its paging geographic area.³ A licensee may also notify us at the three-year construction deadline that they intend to meet the Commission's substantial service requirements in the paging geographic area at the five-year construction deadline for its license.⁴ If a licensee elects to demonstrate substantial service at the five-year deadline, they no longer have the option of only showing two-thirds population coverage at that deadline.

Three-Year Deadline. To comply with Section 22.503(k), licensees must submit construction notifications within 15 days of the construction deadline.⁵ To comply with the three-year construction deadline, a licensee must include an exhibit in its construction notification either (1) demonstrating that it has constructed and is operating facilities sufficient to cover one-third of the population of the licensee's paging geographic area; or (2) notifying us that they intend to meet the Commission's substantial service

¹ The Commission granted 3,104 Major Economic Area (MEA) and Economic Area (EA) paging licenses as a result of Auction 95, which closed in August 6, 2013. In Auction 95, 33 Bidders won 3,104 Licenses. *Auction of Lower and Upper Paging Bands Licenses Closes; Winning Bidders Announced for Auction 95*, Public Notice, 28 FCC Rcd 11848 (Aug. 9, 2013). The three-year construction deadline for 3,060 Auction 95 licenses is November 1, 2016, and the deadline for another 24 licenses is November 13, 2016. The three-year construction deadline for the remaining 20 Auction 95 licenses is January 16, 2018.

² 47 CFR § 22.503(k)(1).

³ *Id.* § 22.503(k)(2).

⁴ *Id.* § 22.503(k)(2)-(k)(3).

⁵ *Id.* § 22.503(k)(1); *see id.* § 1.946(d) (requiring licensees that met coverage or substantial service obligations within the coverage period to notify the Commission by filing FCC Form 601 within 15 days of the expiration of the applicable coverage period).

requirements at the five-year deadline for its license. In addition, if a licensee can demonstrate that it has met the five-year construction requirement at the three-year construction deadline for a license, it must provide an exhibit with its construction notification showing that it has constructed and is operating facilities sufficient to cover two-thirds of the population of the geographic area. The licensee cannot meet the five-year construction requirement at the three-year construction deadline by submitting a substantial service showing at the three-year deadline. Attachment A to this *Public Notice* describes in detail requirements for demonstrating compliance with the three-year construction deadline.

Five-Year Deadline. If a licensee demonstrated at the three-year deadline that it met the one-third population coverage requirement, it may, at the five-year deadline include an exhibit in its construction notification demonstrating that it has constructed and is operating facilities sufficient to cover two-thirds of the population of the license's paging geographic area. If a licensee elected the substantial service option at the three-year deadline, it must show that it meets the Commission's substantial service requirements at the five-year deadline. Section 22.503(k) defines substantial service as "service that is sound, favorable, and substantially above a level of mediocre service that would barely warrant renewal."⁶ Attachment B to this *Public Notice* describes options and requirements for complying with the Commission's substantial service standard, including information on safe harbors, alternative engineering showings, and partitioning.

We note that in some cases, a licensee that elected to show substantial service at the five-year deadline may determine, at the five-year deadline, that its constructed facilities cover two-thirds of the population of the geographic area. A licensee that elected to show substantial service at the five-year deadline, however, may no longer satisfy its five-year buildout requirement with only a demonstration that it has constructed facilities and is providing service to two-thirds of the population of the geographic area. To meet the substantial service requirement in those cases, the licensee must submit not only a construction notification that provides information on the two-thirds population coverage for the license, but also a description of the type of service it is providing, and how that service is meaningful, i.e. sound, substantial and above the level of mediocre service. Finally, if a licensee fails to meet its coverage obligations by the expiration of the coverage period, its authorization terminates automatically without specific Commission action on the date the coverage period expires.⁷

Multiple Licenses

Licensees must file separate notifications showing they have met the construction requirements for each license.⁸ For example, licensees holding licenses authorized on different channel blocks within the same geographic area must file separate notifications for each license. Also, licensees holding licenses authorized on the same channel block in adjacent geographic areas must file separate notifications for each license in each geographic area.

"Line A" Canadian Coordination

The Commission is bound by international agreement to coordinate with the Canadian government when a U.S. applicant proposes to operate stations using frequencies in the 30-174 MHz and

⁶ *Id.* § 22.503(k)(3).

⁷ *Id.* § 1.946(c); *see id.* §§ 1.955(a)(2) (providing that "authorizations automatically terminate (in whole or in part as set forth in the service rules), without specific Commission action, if the licensee fails to meet applicable construction or coverage requirements (citing § 1.946(c))"); 22.503(k) (providing that failure by an MEA or EA licensee to meet either the three-year or five-year coverage requirements, or alternatively, the substantial service requirements no later than five years after initial grant of the authorization, will result in automatic termination of authorizations for those facilities that were not authorized, constructed, and operating at the time the geographic area authorization was granted).

⁸ *See ATT: JEFF SOHN*, Letter, 27 FCC Rcd 5864, 5865 (WTB MD, May 31, 2012) (*citing* Section 22.503(k)(2)-(3) of the Rules, 47 CFR § 22.503(k)(2)-(3), and *Cingular Interactive, L.P., Showing of Substantial Service Pursuant to Section 90.665(c)*, File No.0000226552, Order, 16 FCC Rcd 19200, 19203 (WTB 2001)).

450-470 MHz bands (VHF and UHF Frequency Bands) north of “Line A.”⁹ Paging licensees that intend to operate sites on those frequencies within the U.S.-Canadian coordination zone must seek approval from Industry Canada prior to operation. To obtain Canadian clearance for transmitter sites or mobile units operating north of Line A, a licensee must file an application on FCC Form 601 through the Commission’s Universal Licensing System (ULS) to modify its geographic area license seeking authority to operate at a designated location on specific frequencies.¹⁰

Licensees can neither operate a transmitter site located north of Line A nor include a transmitter site located north of Line A for the purpose of meeting their construction obligations until Canada has approved the proposed site and the Commission has granted the modification application. To expedite staff review of their construction showings, licensees with transmitter sites located north of Line A can include in their construction notifications the ULS modification application file number(s) used to obtain Canadian clearance, whether the demonstration in the notification is based on population coverage at the three-year or five-year construction deadline, or a showing of substantial service at the five-year deadline.

Questions regarding this *Public Notice* may be directed to Jeremy Reynolds at 202-418-0447 or by email at Jeremy.Reynolds@fcc.gov. Questions regarding Canadian Coordination may be directed to Gabriel Ubieta at 202-418-2219 or by email at Gabriel.Ubieta@fcc.gov.

By the Chief, Mobility Division, Wireless Telecommunications Bureau.

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⁹ In particular, frequencies in the 30-174 MHz and 450-470 MHz bands (VHF and UHF Frequency Bands) along the U.S.-Canada border may not be assigned in the United States north of “Line A” without prior coordination with and approval from Industry Canada pursuant to the *Exchange of Notes Between the Government of Canada and the Government of the United States of America Concerning the Coordination and Use of Radio Frequencies Above Thirty Megacycles Per Second* (October 24, 1962) (*Above 30 MHz Agreement*). See 47 CFR § 1.928(a). The coordination zones for the VHF and UHF Frequency Bands are defined by Lines A, B, C, and D. *Id.* at § 2(a). “Line A” defines the coordination zone in the U.S. along the border between Canada and the lower 48 states of the United States and begins at Aberdeen, Washington and terminates at the southernmost point of Bangor, Maine. *Id.*; see 47 CFR §§ 1.928(e) and 90.7 (defining “Line A”). Under the *Above 30 MHz Agreement*, both the United States and Canada have equal access to the entire VHF Frequency Band and assignments for those frequencies are made on a first-come, first-served basis. *Above 30 MHz Agreement* at Arrangement A; see 47 CFR § 22.169.

¹⁰ Before the Commission takes final action on an application for a new or modified U.S. frequency assignment in the coordination zone, the data from the application is referred to Industry Canada as a coordination proposal through the Canadian Co-Channel Serial Coordination System (COSER). Canada approves or rejects a U.S. coordination proposal based on whether harmful interference to an incumbent station in Canada is likely to occur from the proposed U.S. assignment. See *Above 30 MHz Agreement*, Arrangement A at § 4(a); see also *Public Safety and Homeland Security Bureau, Wireless Telecommunications Bureau, and International Bureau Provide Guidance to Part 22 and Part 90 Applicants Seeking VHF and UHF Frequencies Along the U.S. – Canada Border*, Public Notice, 24 FCC Rcd 5578, 5579 (PSHSB/WTB/IB 2009).

ATTACHMENT A

PAGING THREE-YEAR CONSTRUCTION REQUIREMENT OPTIONS

Coverage of One-Third of the Population in the Geographic Area

Pursuant to Section 22.503(k) of the Commission's rules, Licensees must construct sufficient facilities to cover one-third of the population in their paging geographic area no later than three years after the initial grant of their license.¹¹ Under this option, Licensee must provide information sufficient to demonstrate that the license's service contour(s) cover(s) one-third of the population in the geographic area within the market. The construction notification must include:

- a. a list of all counties in the market;
- b. the total population of each county as well as the sum of the total population of all counties;
- c. the percentage of population served by Licensee in the market area.

For the most accurate calculation, population served should be determined using Census Block data from either 1990, 2000, or 2010.¹² If Licensee holds multiple licenses, it must submit separate showings for each call sign.

Maps

We strongly encourage Licensee to include in its construction notification a map showing the service contour(s). If Licensee elects to include a map with its construction notification, the map should include the following: transmitter site(s); county boundaries and the licensed market area boundary clearly marked and labeled; distance scale; latitude/longitude lines; a legend identifying all map attributes; and the service contour for each transmitter site as defined in either Section 22.537 or Section 22.567 of the Commission's rules, as appropriate.

Substantial Service Statement

As an alternative to demonstrating population coverage at the three-year construction deadline, Licensees may notify the Commission that they plan to provide substantial service no later than five years after the initial grant of their licenses.¹³ Under this option, Licensee must include a statement in an exhibit to its construction notification that it intends to demonstrate substantial service at the five-year construction deadline.

Coverage of Two-Thirds of the Population in the Geographic Area

No later than five years after the initial license grant, licensees must construct and operate sufficient facilities to cover two-thirds of the population.¹⁴ Licensee is permitted to demonstrate that it has met the five-year construction requirement for a license at the three-year construction deadline. It must, however, provide an exhibit with its construction notification filed by the three-year deadline showing, as described above, that the license's service contour(s) cover(s) two-thirds of the population in the geographic area within the market. Licensee cannot meet the five-year construction requirement at the three-year construction deadline by submitting a substantial service showing in its notification.

¹¹ 47 CFR § 22.503(k)(1).

¹² Uniform population and geographic area distribution throughout a county is not permitted. For example, 67 percent coverage by a service contour of the geographic area of a county does not automatically equate to 67 percent coverage of the population of that county.

¹³ 47 CFR § 22.503(k)(1).

¹⁴ *Id.* § 22.503(k)(2)-(k)(3).

ATTACHMENT B

PAGING CONSTRUCTION SUBSTANTIAL SERVICE OPTIONS

Substantial Service. If Licensee elected at the three-year construction deadline to show substantial service at the five-year construction deadline, it must provide information on population coverage as well as a description of the type of service it is providing, and how that service is meaningful, i.e. sound, substantial and above the level of mediocre service, as described below.

Partitioning. If, however, Licensee cannot meet the substantial service requirement for the entire market area of the original license, it could partition and cancel the unused licensed area, also as described below, and file a construction notification for the retained licensed area showing compliance with the Commission's substantial service requirements.

Safe Harbors

While Licensee may provide information similar to that described in Attachment A to demonstrate it has met the two-thirds population requirement, the Commission has provided the following safe harbors for paging licensees to meet substantial service requirements:

Unserved Area Safe Harbor

As the Commission stated in its *Paging Third Report and Order*,¹⁵ "we will presume that the substantial service coverage requirement is satisfied if an MEA or EA licensee provides coverage to two-thirds of the population of the unserved area of the MEA or EA within five years of license grant."¹⁶ The Commission defined "unserved area" for purposes of substantial service requirements as "the area not served by co-channel incumbent licensees at the time the MEA or EA license is granted."¹⁷

Under this option, Licensee must provide information sufficient to demonstrate that the license's service contour(s) cover(s) two-thirds of the population in the *unserved area* within the original or retained partitioned market. The construction notification must include:

- a. a list of all counties in the market;
- b. the total population of each county as well as the sum of the total population of all counties;
- c. the total population served in each county by the incumbent service contour(s) as well as the sum of the total population served in all counties by the incumbent service contour(s);
- d. the total population of the unserved area in each county as well as the sum of the total population of the unserved area in all counties;
- e. the total population served by Licensee in the unserved area in each county as well as the sum of the total population served by Licensee in the unserved area in all counties; and
- f. the percentage of population served by Licensee in the unserved area.

The construction notification must also identify the incumbent licensee(s) and incumbent call sign(s). For the most accurate calculation, population served should be determined using Census Block data from either 1990, 2000, or 2010. If Licensee holds multiple licenses, it must submit separate showings for each call sign.

¹⁵ *Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems*, Memorandum Opinion and Order on Reconsideration and Third Report and Order, 14 FCC Rcd 10030 (1999).

¹⁶ *Id.* at 10072, para. 69.

¹⁷ *Id.*

Mobile and Fixed Rural Safe Harbors

As the Commission stated in its *Rural Report and Order*, “[w]ith respect to mobile wireless services, a licensee will be deemed to have met the substantial service requirement if it provides coverage to at least 75 percent of the geographic area of at least 20 percent of the ‘rural areas’ within its licensed area. With respect to fixed wireless services, the substantial service requirement is met if a licensee constructs at least one end of a permanent link in at least 20 percent of the number of ‘rural areas’ within its licensed area.”¹⁸ The Commission defined “rural areas” as “those counties (or equivalent) with a population density of 100 persons per square mile or less, based upon the most recently available Census data.”¹⁹

For mobile wireless services, Licensee must include an exhibit in its construction notification providing: (1) the total number of counties in the entire market; (2) the total number of rural counties in the market; (3) and the number of counties that make up 20 percent of those rural counties.²⁰ In addition, the showing must include a list of all counties in the market and the percent of geographic area covered within each county by the service contour(s). For fixed wireless services, Licensee must provide the information required in 1-3 and the list of counties where Licensee has constructed at least one end of a permanent link.

Alternative Engineering Showings

As the Commission has also previously stated, a licensee is “free to meet the substantial service test by satisfying one of the safe harbors or providing some alternative coverage to its licensed area, depending upon the individual needs of their consumers or their own unique business plans.”²¹ In this case, Sections 22.537 and 22.567 of the Commission’s rules set forth the technical criteria for generating service contours for Part 22 paging licenses used to calculate population coverage required under Section 22.503(k)(1) and (2) of the Commission’s rules.²² Under Section 22.503(k)(3), Licensee may choose to rely on an alternative engineering method to demonstrate substantial service.²³

If Licensee chooses an alternative engineering method, it should include in its construction notification the information listed above with regard to one of the two options listed under population coverage or information supporting the rural safe harbor options. In addition, the construction notification should identify the engineering method used to generate the alternative coverage. Licensee also should include a Forward and Reverse path link budget table that substantiates the method used to generate the alternative coverage, including, at a minimum, the following information for uplink and downlink: transmit power; transmit attenuation or bodyloss; antenna gain; the Effective Radiated Power (ERP); receive sensitivity; receive antenna gain; receive bodyloss; minimum receive levels; reliable signal level; fade margin; and Maximum Allowable Path Loss (MAPL).

If Licensee elects to rely on an alternative engineering method, it also should include, as an exhibit to the construction notification, an affidavit or unsworn declaration signed by an authorized officer of the

¹⁸ *Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services*, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 19078, 19123, para. 79 (2004) (*Rural Report and Order*).

¹⁹ *Id.* at 19087, para. 11.

²⁰ For example, “the licensed area is made up of 15 counties, 10 of which are rural under the Commission’s definition of ‘rural areas.’ Twenty percent of 10 counties is 2 counties.”

²¹ *Rural Report and Order*, 19 FCC Rcd 19124, para. 80.

²² 47 CFR §§ 22.537, 22.567.

²³ *See id.* § 22.503(k)(3) (providing that “[a]s an alternative to the coverage requirements of paragraphs (k)(1) and (k)(2) of this section, the paging geographic area licensee may demonstrate that, no later than five years after the initial grant of the paging geographic area authorization, it provides substantial service to the paging geographic area”).

Licensee under penalty of perjury that complies with Section 1.16 of the Commission's rules and that supports the Licensee's construction notification.²⁴

Description of Service

The substantial service showing in the construction notification also should describe with particularity the type of service provided to actual customers. Licensee must provide this description even if it is covering two-thirds of the population of the geographic area. For example, service may be considered substantial if it offers specialized or technologically sophisticated service that does not require a high level of coverage to benefit customers; serves niche markets such as residential services or services to business or educational campuses; provides service to unserved or underserved areas; provides coverage to rural counties or rural geographic areas; provides significant geographical coverage; serves unique or isolated communities or business parks; or expands provision of E911 services into areas that have limited or no access to such services.

Maps

We strongly encourage Licensee to include in its construction notification a map showing the service contour(s) or alternative coverage used to demonstrate substantial service. If Licensee elects to include a map with its construction notification, the map should include the following: transmitter site(s); county boundaries and the licensed market area boundary clearly marked and labeled; distance scale; latitude/longitude lines; a legend identifying all map attributes; and the service contour for each transmitter site as defined in either Section 22.537 or Section 22.567 of the Commission's rules, as appropriate, or the area covered by the alternative method.

How to Partition a Market

<i>Original License:</i>	The call sign that includes the entire area authorized before partitioning.
<i>Original Partitioned License:</i>	The area that remains under the Original License after partitioning.
<i>Newly Partitioned Area:</i>	The area that is partitioned from the Original License.
<i>Newly Partitioned License:</i>	The call sign that is assigned to the Newly Partitioned Area.

If Licensee elects to partition its license to meet substantial service, it must complete the following steps prior to its five-year construction deadline.

1. Submit, in ULS, a *pro forma* forbearance notification on FCC Form 603 that partitions the Original License to Licensee either by entire county subdivisions or by undefined area (areas made up of partial counties or a mixture of entire and partial counties).
2. If Licensee partitions by entire county subdivision, it must include in the *pro forma* forbearance notification two lists of counties: a list of the counties that make up the Original Partitioned License and a list of counties that make up the Newly Partitioned Area.
3. If Licensee partitions by undefined area, it must use Shapefile, KML, Geojson, or pipe-delimited CSV files to designate the Newly Partitioned Area (based on 1990 county-equivalent boundaries).
4. Licensee must retain responsibility for meeting the construction requirements for both the Original Partitioned License and Newly Partitioned License.²⁵
5. Once the *pro forma* forbearance notification is accepted, ULS will assign the Newly Partitioned Area a new call sign.
6. Licensee must cancel, through ULS, the call sign for the Newly Partitioned License.

²⁴ For example, "[I] believe that all information is complete and accurately represents the deployed system as of the construction deadline, and complies with all applicable FCC rules and regulations that govern Part 22 buildout notifications. I declare under penalty of perjury that the foregoing is true and correct. Executed on (date). [Signature of Authorized Officer]."

²⁵ Because Licensee is both the "original licensee" and the "partitionee," it must elect to satisfy the coverage requirements for the entire original market. See 47 CFR § 22.513(f).

Once the Original Partitioned License is established and the Newly Partitioned License is cancelled, Licensee must submit a construction notification for the Original Partitioned License that includes a substantial service showing for each call sign.