

§ 1600.26 Requests for amendment or correction of records.

(a) *How made and addressed.* You may make a request for amendment or correction of a Foundation record about yourself by following the procedures in § 1600.22. Your request should identify each particular record in question, state the amendment or correction that you want, and state why you believe that the record is not accurate, relevant, timely, or complete. You may submit any documentation that you think would be helpful.

(b) *Foundation responses.* Within 10 working days of receiving your request for amendment or correction of records, the Foundation will send you a written acknowledgment of its receipt of your request, and it will promptly notify you whether your request is granted or denied. If the Foundation grants your request in whole or in part, it will describe the amendment or correction made and advise you of your right to obtain a copy of the corrected or amended record. If the Foundation denies your request in whole or in part, it will send you a letter stating:

(1) The reason(s) for the denial; and
(2) The procedure for appeal of the denial under paragraph (c) of this section, including the name and business address of the official who will act on your appeal.

(c) *Appeals.* You may appeal a denial of a request for amendment or correction to the Executive Director in the same manner as a denial of a request for access to records (see § 1600.25), and the same procedures will be followed. If your appeal is denied, you will be advised of your right to file a Statement of Disagreement as described in paragraph (d) of this section and of your right under the Privacy Act for court review of the decision.

(d) *Statements of Disagreement.* If your appeal under this section is denied in whole or in part, you have the right to file a Statement of Disagreement that states your reason(s) for disagreeing with the Foundation's denial of your request for amendment or correction. Statements of Disagreement must be concise, must clearly identify each part of any record that is disputed, and should be no longer than one typed page for each fact disputed. Your Statement of Disagreement must be sent to the Foundation, which will place it in the system of records in which the disputed record is maintained and will mark the disputed record to indicate that a Statement of Disagreement has been filed and where in the system of records it may be found.

(e) *Notification of amendment/correction or disagreement.* Within 30

working days of the amendment or correction of a record, the Foundation shall notify all persons, organizations, or agencies to which it previously disclosed the record, if an accounting of that disclosure was made, that the record has been amended or corrected. If an individual has filed a Statement of Disagreement, the Foundation will attach a copy of it to the disputed record whenever the record is disclosed and may also attach a concise statement of its reason(s) for denying the request to amend or correct the record.

§ 1600.27 Requests for an accounting of record disclosures.

(a) *How made and addressed.* Except where accountings of disclosures are not required to be kept (as stated in paragraph (b) of this section), you may make a request for an accounting of any disclosure that has been made by the Foundation to another person, organization, or agency of any record about you. This accounting contains the date, nature, and purpose of each disclosure, as well as the name and address of the person, organization, or agency to which the disclosure was made. Your request for an accounting should identify each particular record in question and should be made by writing to the Foundation, following the procedures in § 1600.22.

(b) *Where accountings are not required.* The Foundation is not required to provide accountings to you where they relate to disclosures for which accountings are not required to be kept—in other words, disclosures that are made to employees within the agency and disclosures that are made under the FOIA.

(c) *Appeals.* You may appeal a denial of a request for an accounting to the Foundation Executive Director in the same manner as a denial of a request for access to records (see § 1600.25) and the same procedures will be followed.

§ 1600.28 Preservation of records.

The Foundation will preserve all correspondence pertaining to the requests that it receives under this subpart, as well as copies of all requested records, until disposition or destruction is authorized by title 44 of the United States Code or the National Archives and Records Administration's General Records Schedule 14. Records will not be disposed of while they are the subject of a pending request, appeal, or lawsuit under the Act.

§ 1600.29 Fees.

The Foundation will charge fees for duplication of records under the Privacy Act in the same way in which it charges

duplication fees under § 1600.10. No search or review fee will be charged for any record.

§ 1600.30 Notice of court-ordered and emergency disclosures.

(a) *Court-ordered disclosures.* When a record pertaining to an individual is required to be disclosed by a court order, the Foundation will make reasonable efforts to provide notice of this to the individual. Notice will be given within a reasonable time after the Foundation's receipt of the order—except that in a case in which the order is not a matter of public record, the notice will be given only after the order becomes public. This notice will be mailed to the individual's last known address and will contain a copy of the order and a description of the information disclosed.

(b) *Emergency disclosures.* Upon disclosing a record pertaining to an individual made under compelling circumstances affecting health or safety, the Foundation will notify that individual of the disclosure. This notice will be mailed to the individual's last known address and will state the nature of the information disclosed; the person, organization, or agency to which it was disclosed; the date of disclosure; and the compelling circumstances justifying the disclosure.

Dated: March 7, 2001.

Christopher L. Helms,

*Executive Director, Morris K. Udall
Scholarship and Excellence in National
Environmental Policy Foundation.*

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FEDERAL COMMUNICATIONS COMMISSION**47 CFR Parts 22 and 90**

[WT Docket No. 96-18; PR Docket No. 93-253; FCC 01-66]

Paging Services; Competitive Bidding

AGENCY: Federal Communications Commission.

ACTION: Clarification of final rule.

SUMMARY: The Federal Communications Commission ("Commission") answers petitions for reconsideration and/or clarification concerning various aspects of the *Third Report and Order* previously issued in this proceeding. The Commission grants one petition to the extent to clarify that a licensee who achieved exclusivity prior to the adoption of the *Second Report and Order* previously issued in this proceeding did not lose its exclusivity

as a result of failing to maintain the previously-required minimum number of transmitters after the adoption of the *Second Report and Order*. The Commission also denies a petition requesting that an additional tier of small businesses eligible for an auctions bidding credit be established or, in the alternative, that the current gross revenues threshold to qualify for a 25 percent bidding credit be raised. Further, the Commission denies a petition requesting that it amend its rules either to eliminate the ability of paging licensees to partition along the "boundaries of an FCC-recognized service area" or to specify that the use of Major Trading Area or Basic Trading Area listings is not permitted for partitioning.

DATES: Effective March 15, 2001.

FOR FURTHER INFORMATION CONTACT: G. William Stafford, Wireless Telecommunications Bureau, Commercial Wireless Division at (202) 418-0563.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's *Memorandum Opinion and Order on Reconsideration*, FCC 01-66, in WT Docket No. 96-18 and PR Docket No. 93-253, adopted on February 15, 2001, and released on February 27, 2001. The full text of this *Memorandum Opinion and Order on Reconsideration* is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY-A257, 445 12th Street, S.W., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, DC 20037. The full text may also be downloaded at: www.fcc.gov. Alternative formats are available to persons with disabilities by contacting Martha Contee at (202) 418-0260 or TTY (202) 418-2555.

Synopsis of the Memorandum Opinion and Order on Reconsideration

1. In this *Memorandum Opinion and Order on Reconsideration*, the Commission considers petitions for reconsideration and/or clarification of various parts of the *Third Report and Order* issued in this proceeding. See 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) ("Third Report and Order"), 64 FR 33762, June 24, 1999. The Commission clarifies one aspect of the *Third Report and Order*

concerning interference protection given certain incumbent licensees, and denies the other petitions.

2. *Channel Exclusivity*. In 1993, the Commission established a mechanism for exclusive licensing on thirty-five of the forty 929-930 MHz channels. The *929 MHz Paging Exclusivity Order*, 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) ("*929 MHz Paging Exclusivity Order*"), 58 FR 62289, November 26, 1993, allowed licensees whose systems operated on these channels to earn exclusivity on a local, regional or nationwide basis by constructing multi-transmitter systems that met certain minimum criteria. For example, an applicant for paging stations in the 929-930 MHz band was eligible for local channel exclusivity if, among other requirements, the applicant constructed and operated a local paging system that consisted of at least six contiguous transmitters. In the *Second Report and Order*, 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*"), 62 FR 11616, March 12, 1997, the Commission provided that geographic area licensees must provide co-channel protection to all incumbent licensees. In the *Third Report and Order*, the Commission clarified that 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*. The Commission further clarified that nationwide and geographic area licensees have the right to share with non-exclusive incumbent licensees on a non-interfering basis. Section 22.503(i) of the Commission's rules, 47 CFR 22.503(i), was amended to reflect those clarifications.

3. Blooston, Mordkofsky, Jackson and Dickens ("Blooston") now asks the Commission to clarify that a non-geographic area licensee that achieved exclusivity prior to the adoption of the paging auction rules but, after the adoption of those rules, failed to maintain the minimum number of transmitters that had been required to achieve exclusivity does not thereby lose its exclusive status. Blooston further asks the Commission to clarify that such licensee accordingly would not be considered a non-exclusive

incumbent licensee and would not be required to share with nationwide and geographic area licensees on a non-interfering basis. In its Reply filed on September 9, 1999, to the Personal Communications Industry Association Opposition to Petition for Clarification and/or Reconsideration, Blooston clarified and narrowed the scope of its request. In this *Memorandum Opinion and Order on Reconsideration*, the Commission addresses Blooston's arguments only to the extent that they relate to Blooston's request as clarified and narrowed by its Reply.

4. Section 22.503(i) of the Commission's rules, 47 CFR 22.503(i), provides that all facilities constructed and operated pursuant to a paging geographic area authorization must provide co-channel interference protection to all authorized co-channel facilities of exclusive licensees within the paging geographic area. The rule further provides that non-exclusive licensees on the thirty-five exclusive 929 MHz channels are not entitled to exclusive status and that geographic area licensees have the right to share with these non-exclusive licensees on a non-interfering basis. In establishing these provisions, it was the Commission's intent to recognize the continued exclusivity of licensees who were exclusive incumbents prior to the adoption of the *Second Report and Order*. It is the Commission's view that the public interest would not be served by withdrawing exclusivity rights that had been earned by these licensees. Moreover, maintaining the exclusive status of incumbents that previously earned exclusivity is consistent with the clarification in the *Third Report and Order* that maintained the non-exclusive status of non-exclusive incumbents with respect to sharing with geographic area licensees. Therefore, the Commission clarifies in this *Memorandum Opinion and Order on Reconsideration* that a licensee who achieved exclusivity prior to the adoption of the *Second Report and Order* did not lose its exclusivity as a result of failing to maintain the previously required minimum number of transmitters after the adoption of the *Second Report and Order*. Such a licensee will not be subject to sharing with nationwide and geographic area licensees as a non-exclusive incumbent.

5. The Commission notes, however, that the retained exclusivity rights, as clarified above, remain subject to the determination in the *Third Report and Order* that where an incumbent permanently discontinues operations at a given site, the area no longer served automatically reverts to the geographic area licensee.

6. *Bidding Credits*. In the *Second Report and Order*, the Commission adopted bidding credits for two tiers of small businesses in connection with paging auctions. In the *Third Report and Order*, the Commission retained its two-tiered small business definition and increased the bidding credits. As a result, an entity that, together with its affiliates and controlling interests, has average gross revenues for the preceding three years not exceeding \$3 million qualifies for a 35 percent bidding credit. An entity that, together with its affiliates and controlling interests, has average gross revenues for the preceding three years not exceeding \$15 million qualifies for a 25 percent bidding credit. Morris Communications, Inc. ("Morris") requests that the Commission establish a third tier of small businesses eligible for a bidding credit, to permit an entity with average gross revenues for the preceding three years not in excess of \$40 million to be eligible for a 15 percent bidding credit. In the alternative, Morris requests that the current gross revenues threshold to qualify for a 25 percent bidding credit be raised from \$15 million to \$40 million.

7. The Commission declines to change the small business definitions or bidding credits established for the paging services in its previous orders. In doing so, the Commission notes that it has previously found that the bidding credits adopted in this proceeding achieve a reasonable balance between the positions of those supporting bidding credits in larger amounts and those opposing the use of any bidding credits, and that it has considered the particular nature of the paging industry in establishing its definitions of small businesses eligible for bidding credits. Moreover, the Commission finds that there is no need to alter the small business definitions or bidding credits for paging, even if they differ from the bidding credits for other services such as broadband and narrowband Personal Communications Services, because it has conducted a paging auction within the past year in which it used the bidding credits adopted in the *Third Report and Order* and small businesses were very successful in that auction. Indeed, bidders claiming small business status won 440 of 985 licenses in the 929 and 931 MHz paging auction that closed on March 2, 2000 (Auction No. 26). The successful performance of small businesses in Auction 26 supports the conclusion that the Commission's current small business definitions and bidding credits are appropriate for future paging auctions. Further, as

Morris is the only party to raise this issue, there does not appear to be a widespread belief in the paging industry that the existing small business definitions need to be changed as Morris requests. In sum, the Commission is not persuaded that its small business definitions or bidding credits for paging should be adjusted, and it therefore denies Morris's petition for partial reconsideration.

8. *Partitioning Boundaries in Section 22.513(b) of the Commission's Rules*. In the *Third Report and Order*, the Commission replaced the Rand McNally Major Trading Areas (MTAs) with Major Economic Areas (MEAs) for geographic licensing of the 929–931 MHz band, and affirmed its decision to award licenses for Economic Areas (EAs), as opposed to the Rand McNally Basic Trading Areas (BTAs), for paging systems operating in the lower paging bands. The Commission provided that geographic paging licenses may be partitioned based on any boundaries defined by the parties. Section 22.513(b) of the Commission's rules, 47 CFR 22.513(b), was amended to provide, in pertinent part, that:

[t]he partitioned service area shall be defined by 120 sets of geographic coordinates at points at every 3 degrees azimuth from a point within the partitioned service area along the partitioned service area boundary unless either an FCC-recognized service area is used (e.g., MEA or EA) or county lines are followed.

9. In a petition for reconsideration, Rand McNally & Company ("Rand McNally") requests that the Commission either amend § 22.513(b) to eliminate the ability of paging licensees to partition along the "boundaries of an FCC-recognized service area" or to specify that the use of MTA or BTA listings is not permitted for partitioning in the absence of an express license agreement with Rand McNally permitting such use. Rand McNally asserts that even though the rule does not specify MTA or BTA listings, it continues to encourage Commission licensees to employ MTA or BTA listings. Rand McNally further claims that the Commission would be obligated under the rule to grant a license with an MTA-defined boundary, which would infringe upon Rand McNally's copyright interests.

10. The Commission previously has recognized in this proceeding that Rand McNally is the copyright owner of the MTA/BTA Listings. In the *Third Report and Order*, the Commission acknowledged that economic benefits will accrue from licensing based on a

designation that is in the public domain, and replaced Rand McNally's MTA listings with MEAs for geographic area licensing. Consistent with these determinations, § 22.513(b) of the Commission's rules contains no reference to partitioning on the basis of MTAs or BTAs. The Commission disagrees with Rand McNally's contention that even in the absence of such a reference, the rule somehow encourages licensees to employ MTA or BTA listings. To the contrary, the Commission already has stated in this proceeding that a paging authorization grantee who does not obtain a copyright license (either through a blanket license agreement or some other arrangement) from Rand McNally for use of the copyrighted material may not rely on the grant of a Commission authorization as a defense to any claim of copyright infringement brought by Rand McNally against such a grantee. Furthermore, the Commission need not use the MTA or BTA designations in granting partitioned licenses in this service, regardless of whether the applicant uses them, but may instead reference county line boundaries, as allowed by the rules. In light of these considerations, the Commission sees no need to amend § 22.513(b) of its rules, and therefore denies Rand McNally's petition for reconsideration.

Procedural Matters

A. Regulatory Flexibility Act

11. As required by the Regulatory Flexibility Act ("RFA"),¹ the Commission issued a Supplemental Final Regulatory Flexibility Analysis ("Supplemental FRFA") and a Final Regulatory Flexibility Analysis ("FRFA") in the *Third Report and Order*. The Commission received no petitions for reconsideration in direct response to those analyses. In this *Memorandum Opinion and Order on Reconsideration*, the Commission is not promulgating new rules or revising existing rules, and its action does not affect the previous analyses.

12. Although no RFA analysis or certification is required in this *Memorandum Opinion and Order on Reconsideration*, the Commission takes this opportunity to discuss its disposition of a reconsideration petition concerning small business size standards. In the *Third Report and Order*, the Commission determined that

¹ See 5 U.S.C. 604. The RFA, see 5 U.S.C. 601, *et seq.*, has been amended by the Contract with America Advancement Act of 1996, Public Law No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996.

an entity that, together with its affiliates and controlling interests, has average gross revenues for the preceding three years not exceeding \$3 million would qualify for a 35 percent bidding credit in the Commission's paging auctions. In addition, an entity that, together with its affiliates and controlling interests, has average gross revenues for the preceding three years not exceeding \$15 million will qualify for a 25 percent bidding credit. In December 1998, the Small Business Administration approved the Commission's two-tiered small business size standards. In this *Memorandum Opinion and Order on Reconsideration*, the Commission denies a petition for reconsideration requesting that it establish a third tier of small businesses eligible for a bidding credit, to permit an entity with average gross revenues for the preceding three years not in excess of \$40 million to be eligible for a 15 percent credit. The Commission also denies the petitioner's alternative request that the threshold to qualify for a 25 percent bidding credit be raised from \$15 million to \$40 million. In denying both requests, the Commission explains that it has considered the particular nature of the paging industry in establishing its definitions of small businesses eligible for bidding credits. The Commission also finds that there is no need to alter the small business definitions or bidding credits for paging because it has conducted a paging auction within the past year in which the Commission used the bidding credits adopted in the *Third Report and Order* and small businesses were very successful in that auction. The Commission finds that the successful performance of small businesses in Auction 26 supports the conclusion that the current small business definitions and bidding credits are appropriate for future paging auctions. Finally, the Commission notes that, as this petitioner is the only party to raise this issue, there does not appear to be a widespread belief in the paging industry that the existing small business definitions need to be changed in the manner requested.

B. Paperwork Reduction Act

13. This *Memorandum Opinion and Order on Reconsideration* contains no new or modified information collections that are subject to the Paperwork Reduction Act of 1995, Public Law 104-13.

Ordering Clauses

14. Accordingly, *It Is Ordered*, pursuant to sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 405, and

§ 1.106 of the Commission's rules, 47 CFR 1.106, that the Petition for Clarification and/or Reconsideration filed July 26, 1999 by Blooston, Mordkofsky, Jackson and Dickens, as clarified by its Reply filed September 9, 1999, *Is Granted* to the extent provided herein.

15. *It Is Further Ordered*, pursuant to sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 405, and § 1.106 of the Commission's rules, 47 CFR 1.106, that the Morris Communications Petition for Partial Reconsideration filed July 26, 1999 and the Petition for Reconsideration of Rand McNally & Company filed July 23, 1999 *Are Denied*.

16. *It Is Further Ordered*, pursuant to section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), that this proceeding *Is Terminated*.

Federal Communications Commission.

Magalie Roman Salas,
Secretary.

Appendix A

Petitions for Reconsideration

Morris Communications, Inc.
Rand McNally & Company
Blooston, Mordkofsky, Jackson and Dickens

Oppositions to Petitions

Personal Communications Industry
Association

Replies to Oppositions

Blooston, Mordkofsky, Jackson and Dickens

Ex Parte Filings

The Rural Telecommunications Group
Organization for the Promotion and
Advancement of Small
Telecommunications Companies

[FR Doc. 01-6386 Filed 3-14-01; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01-546; MM Docket No. 99-94; RM-9532, RM 9834

Radio Broadcasting Services; Hinton, Whiting, and Underwood, IA; and Blair, NE

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Sunrise Broadcasting of Nebraska, Inc., substitutes Channel 267C2 for Channel 268C3 at Blair, Nebraska, reallocates Channel 267C2 from Blair to Whiting, Iowa, and modifies

Station KISP(FM)'s license accordingly (RM-9834). At the request of Mountain West Broadcasting, we dismiss the petition proposing the allotment of Channel 267A at Hinton, Iowa (RM-9532). See 64 FR 15712, April 1, 1999. At the request, of Sunrise Broadcasting of Nebraska, Inc., we also dismiss the proposal to allot Channel 268A at Underwood, Iowa, as the community's first local aural transmission service. Channel 267C2 can be allotted to Whiting in compliance with the Commission's minimum distance separation requirements with a site restriction of 18.4 kilometers (11.2 miles) northeast at Station KISP(FM)'s requested site. The coordinates for Channel 267C2 at Whiting are North Latitude 42-16-20 West Longitude 96-02-27.

DATES: Effective April 16, 2001.

FOR FURTHER INFORMATION CONTACT:

Sharon P. McDonald, Mass Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99-94, adopted February 21, 2001, and released March 2, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY-A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857-3800, 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 54, 303, 334, and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Iowa, is amended by adding Whiting, Channel 267C2.

3. Section 73.202(b), the Table of FM Allotments under Nebraska, is amended by removing Channel 268C3 at Blair.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01-6407 Filed 3-14-01; 8:45 am]

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