

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
Amendment Of Part 2 Of The Commission's	)	ET Docket No. 00-258
Rules To Allocate Spectrum Below 3 GHz For	)	
Mobile And Fixed Services To Support The	)	
Introduction Of New Advanced Wireless	)	
Services, Including Third Generation Wireless	)	
Systems	)	
	)	
Petition For Rulemaking Of The Cellular	)	RM-9920
Telecommunications Industry Association	)	
Concerning Implementation Of WRC-2000;	)	
Review Of Spectrum And Regulatory	)	
Requirements For IMT-2000	)	
	)	
Amendment Of The U.S. Table Of Frequency	)	RM-9911
Allocations To Designate The 2500-	)	
2520/2670-2690 MHz Frequency Bands For	)	
The Mobile-Satellite Service	)	

To: The Commission

**COMMENTS**

Blooston, Mordkofsky, Dickens, Duffy and Prendergast, on behalf of Communication Enterprises, Inc., Souris River Telecommunications Cooperative, Consolidated Telcom, CC Communications, Telcom Systems, Ltd., and Dell Telephone Cooperative, Inc. (hereinafter "the Blooston Commenters"), hereby submit these comments in response to the Commission's *Notice of Proposed Rule Making and Order* ("NPRM") in the above-captioned matter.<sup>1</sup>

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<sup>1</sup> See, Amendment Of Part 2 Of The Commission's Rules To Allocate Spectrum Below 3 GHz For Mobile And Fixed Services To Support The Introduction Of New Advanced Wireless Services, Including Third Generation Wireless Systems, *Notice of Proposed Rule Making and Order*, ET Docket 00-258, Released: January 5, 2001. (hereinafter "NPRM")

The Blooston Commenters focus their comments on just one aspect of the complex rulemaking being undertaken in this proceeding to foster the introduction of advanced wireless services. In particular, it is respectfully submitted that the Commission should abandon its proposal to eliminate the voluntary negotiation period, shorten the overall negotiation period and discontinue the ability of relocated licensees to return to previously occupied spectrum for microwave licensees in the 2110-2150 MHz, 2160-2165 MHz and 2500-2690 MHz bands. While the Blooston Commenters fully support the Commission's initiative to enable third generation ("3G") services, it is not in the public interest to compromise the relocation procedures designed to protect important telecommunication services that have been in operation for several years. In support hereof, the following is respectfully shown:

**I. STATEMENT OF INTEREST**

Commenters are small businesses, including rural telephone companies, who between them utilize several licenses in the Point to Point Microwave Radio Service. As such, they are dependent upon the Commission's current policy on microwave relocation, and would be harmed by the Commission's adoption of its proposed new policy. The Blooston Commenters do not seek to gain a windfall through the microwave relocation process. Instead, they seek only the right to insist on the provision of effective alternative means of communication that will provide truly comparable reliability without disruption of their existing operations.

**II. BACKGROUND**

In its January 5, 2001 *Notice of Proposed Rule Making and Order*, the Commission explores the possibility of, and requests comment on, the use of various frequency bands below 3 GHz to accommodate the introduction of new advanced wireless services, including third

generation (3G) and future wireless systems.<sup>2</sup> The Commission noted that the 2110-2150 MHz and 2160-2165 MHz bands, currently allocated on a primary basis to the Fixed and Mobile Services, were targeted for reallocation for the benefit of new and innovative technologies as early as 1992.<sup>3</sup> In November 1998, the Commission proposed to reallocate the 2110-2150 MHz band to the Fixed and Mobile Services. These frequencies were to be assigned by competitive bidding. The Commission's 1998 NPRM would permit the Multipoint Distribution Service ("MDS") and Instructional Television Fixed Service ("ITFS") and fixed microwave licensees to share the 2160-2162 MHz band, while 2162-2165 MHz would have been allocated for fixed and mobile emerging technologies. In 1999, the Commission issued a *Policy Statement* in which it announced its intention to start a separate proceeding to allocate these bands for advanced mobile and fixed communication services.<sup>4</sup> The Balanced Budget Act of 1997 requires that the 2110-2150 MHz band be assigned by auction no later than September 30, 2002.<sup>5</sup>

The Commission proposes that incumbent users of the 2110-2150 MHz and 2160-2165 MHz bands be relocated and that the bands be designated for the provision of advanced mobile and fixed communications services. The *NPRM* outlined the relocation procedures fixed microwave incumbents in the 2110-2150 MHz and 2160-2165 MHz bands are currently entitled

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<sup>2</sup> Id.

<sup>3</sup> See Redevelopment Of Spectrum To Encourage Innovation In The Use Of New Telecommunications Technologies, ET Docket No. 92-9, *First Report And Order And Third Notice Of Proposed Rule Making*, 7 FCC Rcd 6886 (1992). (*Emerging Technologies Proceeding*)

<sup>4</sup> See Principles for Reallocation of Spectrum to Encourage the Development of Telecommunications Technologies for the New Millennium, FCC 99-354, *Policy Statement*, 14 FCC Rcd 19868 (1999).

<sup>5</sup> See Balanced Budget Act of 1997, Pub. L.No. 105-33, 111 Stat. 251, §3002(c)(1) (1997).

to under the policies adopted in the *Emerging Technologies* proceeding.<sup>6</sup> The Commission further noted that it had recently modified some of the relocation procedures for incumbent users in the 2165-2200 MHz band for the benefit of new Mobile-Satellite Service (“MSS”) entrants in that band.<sup>7</sup>

The modified MSS relocation procedures eliminated the voluntary negotiation period, shortened the mandatory relocation period,<sup>8</sup> and eliminated the right of incumbent licensees to return to previously occupied spectrum if the relocation technology proved to be ineffective during the first year of use.<sup>9</sup> In that proceeding, the Commission indicated that the MSS relocation process had unique considerations which justified the abridged relocation rights.<sup>10</sup> However, the Commission now proposes to “use the modified relocation procedures (i.e., those designated for fixed microwave service incumbents in the 2165-2200 MHz and 2110-2115 MHz

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<sup>6</sup> Fixed microwave service incumbents are entitled to compensation for relocation of any links that may pose an interference threat to new fixed or mobile system licensees, including all engineering, equipment, site and FCC fees. The new entrant must complete all activities necessary for implementing the replacement facilities, including engineering and cost analysis of the relocation procedures, and must test the new facilities to ensure comparability with the existing facilities. *NPRM*, at ¶ 54. The process of relocation generally involves three stages: voluntary negotiation, wherein the incumbent need not negotiate if it so chooses; mandatory negotiation, where an incumbent must negotiate in good faith (as must the new entrant); and involuntary relocation, where the incumbent is required to relocate and the new entrant is obliged to relocate only those specific links to which their systems pose an interference problem.

<sup>7</sup> See Amendment of Section 2.106 of the Commission’s Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service, ET Docket 95-18, *Second Report and Order and Second Memorandum Opinion and Order*, 15 FCC Rcd 12315 (2000), *recon. pending, petition for review pending*. (*MSS 2<sup>nd</sup> R&O*)

<sup>8</sup> See 47 C.F.R. § 101.69(d).

<sup>9</sup> See 47 C.F.R. § 101.75(d).

<sup>10</sup> “The relocation of BAS is particularly difficult compared to prior relocations of FS microwave licensees. As we have noted, BAS is a highly integrated, nationwide service in which simple, link-by-link relocation is not possible, this is why we have designed the BAS transition plan above.” *MSS 2<sup>nd</sup> R&O*, ¶ 62.

bands) for any incumbent user of the 2110-2150/2160-2165 MHz bands, including MDS entities at 2160-2162 MHz.” *NPRM*, at ¶55.

The Commission’s apparent justification for this proposed change in relocation rules is as follows:

[D]ifferent new licensees may be responsible for relocating each half of a channel pair for a given incumbent licensee. Consequently, it is possible that a new entrant in the 2110-2150 MHz band could be assigned spectrum that would have two sets of relocation procedures in effect.”  
*NPRM*, at ¶54.

### **III. THE COMMISSION SHOULD REFRAIN FROM COMPROMISING THE RELOCATION RIGHTS OF INCUMBENT MICROWAVE LICENSEES**

It is respectfully submitted that the above explanation is not sufficient justification for jettisoning the voluntary negotiation period or making the other changes in relocation procedures proposed in the *NPRM*. Public policy would lean toward being more fair to the incumbent, rather than lessening its rights.

The *NPRM* does not satisfactorily explain the proposed departure from the Commission’s earlier relocation policy. In its *MSS 2<sup>nd</sup> R&O*, the Commission clearly defined the parameters of its relocation policy, and elaborated on why, in the *MSS* proceeding, it departed from that policy:

[T]he nature of BAS [Broadcast Auxiliary Services] as an integrated, coordinated system, and the nationwide nature of *MSS* necessitate a much more structured relocation framework than that contemplated in our *Emerging Technologies* proceeding. There are substantial differences between BAS and FS microwave. BAS is an integrated service whose licensees undergo a dynamic coordination process on a daily basis in covering news events. FS microwave is far less integrated, consisting essentially of a large number of individual links, with coordination required only upon first activation of any link, to ensure that the new link is sufficiently removed from existing links in frequency, geography, and orientation to avoid harmful interference. Further, FS microwave relocation has thus far consisted of removing links from the 2 GHz spectrum and relocating them to spectrum above 5 GHz. By contrast, BAS “relocation” will consist of reducing the seven BAS channels into a smaller portion of the same band they currently

occupy. Finally, the integrated nature of BAS, along with the nationwide, and indeed global, scope of MSS, makes a licensee-by-licensee relocation of BAS impossible. *MSS 2<sup>nd</sup> R&O*, ¶ 42.

The Commission found that eliminating the voluntary negotiation period to be justified due to the unique nature of the BAS,<sup>11</sup> the relocation of which is borne heavily by the first entrant, and then cost-shared with later service providers because of the interrelated nature of the service. The Commission noted that MSS proceeding had been underway since 1995, but had been delayed by Congressional action “and other factors.” The Commission stated, “We believe that the considerable proscriptions we have been obligated to place upon the relocation of BAS, compared to previous relocations of FS microwave licensees, narrows the scope of negotiations considerably.” *MSS 2<sup>nd</sup> R&O*, ¶ 44. There has been no such consideration or finding regarding the relocation of incumbent point-to-point microwave licensees, and the Commission did not explain or distinguish its January 5, 2001 departure from its July 3, 2000 finding. Rather, there is a compelling need to keep the voluntary relocation period in place. First, some of the best solutions to a microwave relocation situation may be non-traditional solutions, such as the use of commercial services. However, these solutions do not readily lend themselves to an “apples-to-apples” comparison when determining whether the emerging technology licensee has truly furnished a “comparable” capability. Incumbent licensees must be free to evaluate, and either accept or reject, such non-traditional solutions in the context of the voluntary negotiation process. They should not be punished for considering (but perhaps rejecting) non-comparable solutions by being forced into “mandatory” negotiations over such matters. Moreover, the voluntary period provides incumbents with needed leverage in ensuring that a replacement technology is indeed comparable: Has the auction winner agreed to provide brand-name

equipment that the incumbent knows will be reliable and supported by the manufacturer long into the future? Has the auction winner agreed to furnish only new (versus refurbished) equipment, as well as adequate spare parts? Has the auction winner agreed to observe procedures that will ensure the safety of incumbent's employees/invitees, and the least possible disruption of incumbent's operations?

The 2GHz microwave band is a prime spectrum range for long (i.e., up to 20-mile) communications paths, and has been used by rural telephone companies and other telecommunications service providers as a cost-effective, reliable backbone/backhaul solution for years. In many cases, rural carriers rely on 2 GHz microwave to enable the provision of service to areas in which copper or fiber would be prohibitively expensive. It is vital that these carriers have the voluntary negotiation period available as an incentive for emerging technology licensees to take the incumbent's relocation concerns seriously.

In the MSS proceeding, the Commission likewise distinguished its decision to not permit the BAS licensees the same rights as microwave licensees to return to their original spectrum:

It would not be in the public interest to allow a right of return to relocated incumbents, as was provided in our *Emerging Technologies Proceeding*. The disruption to region-wide or world-wide satellite systems for the benefit of relatively few BAS incumbents is infeasible. We will therefore allow involuntarily relocated BAS incumbents to petition the Commission for additional modification to or replacement of their equipment in any case where the incumbent believes it has not received comparable performance from its retuned or replaced equipment. Upon proof shown, we will order the MSS licensee in question to further modify or replace the incumbent BAS licensee's equipment.

*MSS 2<sup>nd</sup> R&O*, ¶ 48.

In the case of 2 GHz microwave incumbents, the same justification does not apply. An incumbent microwave link will generally affect only a part of the 3G system's coverage. The

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<sup>11</sup> Id.

threat of an incumbent being able to return to its 2 GHz spectrum is a powerful incentive for a 3G licensee to perform its relocation responsibilities thoroughly and correctly. If the 3G licensee abides by the Commission's requirements, it should not be concerned about an incumbent's right to return to its spectrum, because the need to return would never arise. Conversely, if an incumbent loses this right to return, it faces a lengthy complaint process at the Commission (i.e., several months) before gaining enforcement of its rights. Most incumbents will go out of business if forced off the air for that long; and in rural areas and elsewhere, such disruption of service raises safety issues.

The Blooston Commenters therefore urge the Commission to refrain from its proposed revisions of the microwave relocation rules as they apply to incumbent users in the 2110-2150 MHz and 2160-2165 MHz bands. These changes would seriously compromise incumbents' rights to insist on fair relocation terms, by removing much of their negotiating leverage with possible future entrants. Given the Commission's penchant for auctioning spectrum in large geographic blocks, which sell for millions upon millions of dollars, it is unlikely that any of the incumbents will be in a position to purchase "their" spectrum at auction. Third generation auction winners may be able to dictate exactly when incumbents must abandon their spectrum, and may have little incentive to make certain they ensure that the replacement facilities are truly comparable and thoroughly tested.

In the instant matter, the Commission has not explained its departure from its earlier, well-reasoned analysis of the difference between BAS and fixed microwave as a justification for departing from the microwave relocation rules and adopting a more restrictive standard. The microwave relocation rules were adopted in 1996 with the full participation of microwave

incumbents.<sup>12</sup> The rules adopted, to a certain extent, reflected a compromise between microwave operators, PCS licensees and the Commission. The rules reflected the important nature of the long-established microwave links. These links serve an important purpose for rural America, providing communications services to rural areas. The unique propagation characteristics of the 2 GHz band at which they were originally located provided the ability to communicate over long distances. Upon relocation to a higher band, those propagation characteristics change; the distance that the signal can reliably travel becomes shorter, necessitating more transmission facilities to cover the same distance. Considerations like these were taken into account in the initial microwave relocation rules, but have not been addressed in the instant proceeding.

The Commission expresses concern about new entrants having to coordinate relocation under two schedules. However, the record contains no evidence, nor even an unsupported anecdote, that such coordination would cause any, much less insurmountable, problems for new entrants. Without such evidence, there is no justification to gut the relocation policy of microwave incumbents.

#### **IV. THE 2500-2690 MHz BAND**

The Commission likewise proposes using the BAS relocation policies for relocation of the 2500-2690 MHz band. The Commission stated:

If a portion of this band were made available for advanced services, either through reallocation or relocation, we seek comment on applying to incumbent users in this band that we decide to apply to incumbent users in the 2110-2150 MHz and 2160-2165 MHz bands.

*NPRM*, at ¶65.

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<sup>12</sup> See Amendment to the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation, *First Report and Order and Further Notice of Proposed Rule Making*, 11 FCC Rcd. 8825 (1996).

Commenters suggest that, for the 2500-2690 MHz band, like the 2110-2150 MHz and 2160-2165 MHz bands, there is no justification to deviate from established policy, and should abandon both proposals.

**V. CONCLUSION**

WHEREFORE, for good cause shown, the Blooston Commenters respectfully request that the Commission abandon its proposal to modify the relocation policy as it applies to licensees in the 2110-2150 MHz, 2160-2165 MHz and 2500-2690 MHz bands.

Respectfully Submitted,

By

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