

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	ET Docket No. 00-221
Reallocation of the 216-220 MHz,)	
1390-1395 MHz, 1427-1429 MHz,)	RM-9267
1429-1432 MHz, 1432-1435 MHz,)	RM-9692
1670-1675 MHz and 2385-2390 MHz)	RM-9797
Government Transfer Bands)	RM-9854

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COMMENTS OF AT&T WIRELESS SERVICES, INC.

Pursuant to the Commission’s Notice of Proposed Rulemaking, released November 20, 2000, AT&T Wireless Services, Inc. (“AT&T”) hereby submits its comments in the above-captioned proceeding.^{1/} AT&T intends to file additional comments in a related proceeding commenced by the National Telecommunications and Information Administration (“NTIA”).^{2/} These comments, therefore, will provide a general overview of issues surrounding the reimbursement of federal entities for spectrum relocation costs. AT&T will submit a copy of the comments it files in the NTIA proceeding to the Commission.

INTRODUCTION AND SUMMARY

The Commission and NTIA should maximize the substantial benefits that spectrum reallocation offers both to commercial and government users by implementing efficient and just

^{1/} *In the Matter of Reallocation of the 216-220 MHz, 1390-1395 MHz, 1427-1429 MHz, 1429-1432 MHz, 1432-1435 MHz, 1670-1675 MHz, and 2385-2390 MHz Government Transfer Bands, Federal Communications Commission, Notice of Proposed Rulemaking, ET Docket Nos. 00-221, RM-9267, RM-9692, RM-9797, RM-9854 (rel. Nov. 20, 2000) (“FCC NPRM”).*

^{2/} *Mandatory Reimbursement Rules for Frequency Band or Geographic Relocation of Federal Spectrum-Dependent Systems, Department of Commerce, National Telecommunications and*

relocation and reimbursement policies. The Commission should permit commercial users to share spectrum with existing users or to retune or modify existing users' equipment or facilities when new licensees determine that such options would be more efficient than engaging in the expensive and time-consuming alternative of full relocation. In addition, as suggested by NTIA, reimbursement should be provided not only to those government entities required by statute or regulation to release spectrum, but also to those that do so voluntarily. Such a policy would increase the amount of spectrum for commercial auction by giving government users an incentive to relocate.

More generally, clear, fair, and flexible reimbursement and relocation rules would speed the availability, and increase the affordability, of new spectrum to commercial users (and ultimately to consumers), as well as ease disruption to government users currently occupying the bands. To the extent that relocation is not necessary, both sides benefit. And, if spectrum cannot be shared, relocation resources are likely to provide substantial aid to the ongoing modernization efforts of numerous federal entities, including the Department of Defense. The costs of such relocation need not unduly strain the commercial industry's resources if, as some parties suggest, they were to be funded through the proceeds of the auction itself.

To employ these alternatives effectively, adequate information regarding a variety of issues (such as the nature, location, and use of the affected facilities or frequencies) must be disclosed prior to auction so that industry may fully evaluate the feasibility and cost of those plans. The provision of such information would not only help ensure the fair treatment of potential bidders and new licensees, it would also help ensure the viability of the auctions themselves by encouraging the participation of qualified and well-informed bidders, some of

Information Administration, *Notice of Proposed Rulemaking*, Docket No. 001206341-0341-01, RIN 0660-AA14 (Jan. 18, 2001) (“NTIA NPRM”).

whom would not otherwise participate. In addition, participation by bidders with a clear understanding of the scope of their potential obligations would provide government entities with increased certainty that they would be fully reimbursed for relocation while also lessening the likelihood of unexpected disruption stemming from relocation disputes and other problems. Properly-structured rules would thus benefit both industry and the affected federal agencies, and should therefore be expeditiously adopted in light of the fast-approaching statutory deadlines for auction.

I. A FLEXIBLE REGULATORY APPROACH TO RELOCATION AND REIMBURSEMENT SHOULD BE ADOPTED.

A. New Licensees Should Be Able To Choose Less Expensive Alternatives to Relocation when Technically Feasible

AT&T strongly supports NTIA's attempts to find alternatives to the expensive process of relocation. In particular, NTIA asks whether federal entities using spectrum designated for exclusive commercial use should be permitted to share spectrum, when technically feasible, rather than relocating.^{3/} The answer to that question is an emphatic yes, so long as the ultimate decision about whether a particular government user should be relocated or permitted to share is made by the new licensee rather than by the federal entity.

To the extent that commercial users could reap substantially the same benefit from shared use of the spectrum as they would from exclusive use, spectrum sharing would be a far superior option to full relocation in terms of cost, time, and convenience. Sharing might be appropriate, for instance, in situations in which the government use is restricted to a small geographical area or an off-use time period. Avoiding relocation whenever possible would also result in far less disruption to government users than a policy that requires relocation in all circumstances.

^{3/} *Id.* at ¶ 13.

AT&T similarly supports NTIA's proposed limitation of reimbursement to retuning or modification costs when such action is a technically feasible alternative to relocation.^{4/} NTIA suggests that "to the extent that a Federal entity that is required to relocate is able to modify its equipment" so that "the retuned equipment provides operational capabilities comparable with its original system," reimbursement costs would be limited to the cost of retuning.^{5/} As with the sharing proposal discussed above, limiting reimbursable costs only to the costs that are truly necessary is economically efficient, practical, and fair.

Providing licensees with the flexibility to choose the best available option for each particular circumstance -- whether it is sharing, retuning, or full relocation -- should help ensure that the relocation process proceeds smoothly, cost-effectively, and efficiently. In order to make such tailored, rational decisions, however, licensees must have adequate information about a variety of issues, including the nature, location, and uses of the affected facilities or frequencies. As discussed more fully below, the informational requirements currently proposed by NTIA are inadequate and must be expanded to provide substantially more detail.^{6/} Even assuming the adoption of more robust informational requirements, however, the government would retain a strong informational advantage over auction winners. The licensee's choice between relocation

^{4/} *Id.* at ¶ 24.

^{5/} *Id.*

^{6/} NTIA's proposals specifically address the information that must be disclosed prior to bidding. Although the choice regarding the precise option to be pursued would be made by the auction winner following the auction, potential bidders must be provided with the same information prior to auction so that they can make informed decisions regarding their participation in the auction and their bidding strategy. Should the Commission and NTIA deem spectrum sharing at the licensee's option to be a permissible alternative to relocation, NTIA's proposed rules will have to be amended to specifically require disclosure of information relevant to the feasibility and cost of spectrum sharing.

and sharing, retuning, or modification should therefore govern unless the government demonstrates that the licensee's choice is impracticable.

B. Reimbursement for Voluntary Relocation Should Be Permitted

Voluntary relocation by federal entities that have determined such relocation to be consistent with their needs is an economically optimal way of furthering the oft-repeated legislative and regulatory goal of increasing the commercial availability of spectrum.^{7/} Such tailored and informed decision-making by federal entities may even reduce the need to employ the blunter tools of regulatory or legislative action in the future to increase the amount of spectrum available to meet ever-growing private sector needs. NTIA should act to fulfill its Congressional directive to foster the “full and efficient use of . . . radio spectrum . . . by the

^{7/} See 47 U.S.C. § 922(4) (requiring that spectrum planning efforts consider “actions necessary to promote the efficient use of the spectrum, including spectrum management techniques to promote increased shared use of the spectrum that does not cause harmful interference as a means of increasing commercial access”); 47 U.S.C. §§ 309(j)(3)(a), (b), (d) (listing among criteria to be used by Commission in determining licenses and permits to be issued by competitive bidding and the factors on which such awards should be based, the development of new technologies, products, and services for use of public, promotion of economic opportunity and competition, and efficient and intensive use of the electromagnetic spectrum); 47 U.S.C. § 303(g) (requiring the Commission, consistent with its other obligations, to “generally encourage the larger and more effective use of radio in the public interest”); 47 U.S.C. § 923(h) (directing any federal entity required to relocate to complete such relocation or consolidate its spectrum in a manner that maximizes the spectrum available for non-Federal use” to “the maximum extent practicable”); *In the Matter of Principles for Reallocation of Spectrum to Encourage the Development of Telecommunications Technologies for the New Millenium*, Federal Communications Commission, *Policy Statement*, FCC 99-354, 14 FCC Rcd. 19,868 (rel. Nov. 22, 1999) (“Spectrum Allocation Principles”) (emphasizing the importance of increasing the amount of spectrum available for commercial purposes and improving the efficiency of spectrum use); *In the Matter of Principles for Promoting the Efficient Use of Spectrum by Encouraging the Development of Secondary Markets*, Federal Communications Commission, FCC 00-401 (rel. Dec. 1, 2000) (“Efficient Use of Spectrum”) (explaining that the Commission’s current policies regarding transfer, assignment, disaggregation, and partitioning of licenses are intended to increase the flow of spectrum among users and uses in order to meet increasing economic demand for spectrum-based services).

Federal government” to benefit “the public interest” by encouraging such voluntary relocation through the provision of reimbursement.^{8/}

As NTIA correctly concludes, reimbursement for voluntary relocation is authorized by 47 U.S.C. § 923(g)(1)(A).^{9/} That provision states that “any federal entity which operates a Federal Government station may accept from any person payment of the expenses of relocat[ion]” undertaken to “expedit[e] the commercial use of the electromagnetic spectrum.” This express recognition by Congress further supports the adoption of a policy of reimbursement of voluntarily relocating government users. As demonstrated above, such a policy is also consistent with other statutory and regulatory goals and economically beneficial to both government and commercial users.

II. BIDDERS MUST BE PROVIDED WITH SUFFICIENT INFORMATION TO MAKE RATIONAL ECONOMIC CHOICES.

Although AT&T supports many aspects of the NTIA NPRM, NTIA’s proposed rules do not adequately recognize potential bidders’ need for specific information regarding reimbursement costs prior to auction. The information to be disclosed pursuant to the NTIA NPRM varies depending on the security classification of the affected facilities or frequency uses. Although AT&T, of course, does not object to reasonable differentiation based upon national security needs, it does object to the lack of specificity regarding the information to be provided in the unclassified context and to NTIA’s overly restrictive treatment of information relating to sensitive and classified facilities or frequency uses. Further disclosure of specific information is essential in both instances so that potential bidders can formulate bidding strategies that take into account likely reimbursement costs or decide whether to participate in the auction at all.

^{8/} See 47 U.S.C. § 901(c).

A. NTIA’s Proposed Disclosure Requirements for Unclassified Facilities and Services Are Too Broadly Defined

NTIA’s current proposal for the release of cost information for unclassified facilities and frequency uses simply asserts that NTIA must provide the Commission with information relating to several general topics without defining precisely what information is included within those categories.^{10/} For instance, the proposed rules require NTIA to provide information regarding the “location of each facility.”^{11/} The rules do not clarify what data would fall within that disclosure requirement: the general geographical area (*e.g.*, state or region); the license area; specific geographical coordinates such as latitude or longitude; or other information. Different and more complete information, however, will be required depending upon the particular use of the frequency. For instance, when a microwave or similar facility is being relocated, a potential bidder would need to know at a minimum the number of microwave paths by the applicable license area (*e.g.*, BTA, MTA, EA) that would need to be relocated.^{12/} Similarly, NTIA proposes that it would forward information to the Commission regarding the “general type of operation and equipment (*e.g.*, fixed microwave, tactical mobile radio)” to be affected by relocation.^{13/}

^{9/} *Id.* at ¶ 26.

^{10/} NTIA proposes that the following information be provided to the Commission prior to auction: the list of affected government facilities; the identity of the government agency operating each facility; the location of each facility; the general type of operation and equipment (*e.g.*, fixed microwave, tactical mobile radio, *etc.*); whether the facility can be retuned, modified, or must be relocated; the estimated marginal cost of retuning, modification, or relocation; whether the facility overlaps to one or more license areas or spectrum blocks; and the total estimated costs of relocation for all assignments. NTIA NPRM ¶ 42.

^{11/} *Id.*

^{12/} For example, if the Commission chooses to auction reallocated spectrum by BTAs, then prospective auction participants would have to know the number and nature of all government facilities on a BTA-by-BTA basis.

^{13/} NTIA NPRM ¶ 42.

More detailed information regarding the type of equipment being used (such as the brand, model, price, quality, and age), the amount of equipment to be replaced (especially the number of towers that would have to be replaced), and the type of functions that the equipment is specifically being used to perform (such as transmitting voice traffic, emitting beacons, or utilizing sonar capabilities) would be crucial to bidders in determining the difficulty and cost of relocation.

In addition, NTIA's proposed requirement that it provide information about whether the facility can be retuned or modified rather than being relocated is overly vague.^{14/} A simple yes or no would do little to help a potential bidder evaluate its potential expenses. Without detailed information regarding the agency's analysis of this question, the bidder would be unable to determine whether the affected entity's plan is viable or cost-efficient or whether it should propose a possibly superior plan of its own. Moreover, NTIA's proposal that bidders be told the expected total cost of relocation is inadequate if the underlying information is not also provided.^{15/}

The Commission has recognized the need for the disclosure of information supporting estimated costs and verification of such costs in several other contexts, including relocation of fixed microwave providers and 800 MHz band licensees.^{16/} NTIA's anemic disclosure

^{14/} *Id.*

^{15/} *Id.*

^{16/} *See* 47 C.F.R. § 24.245(b) (requiring submission of documentation itemizing the amount spent for certain costs subject to reimbursement and, in some instances, an appraisal of compensable relocation costs by an independent third party); 47 C.F.R. § 101.89(b) (requiring good faith negotiation regarding terms of relocation including the provision of information "reasonably necessary to estimate relocation costs"); 47 C.F.R. § 101.71 (requiring incumbent to provide access, upon request, to an independent third party to examine and prepare estimate of cost and time for relocation when voluntary negotiations have failed); 47 C.F.R. § 101.73 (imposing good faith obligation during involuntary negotiations which requires provision of information "reasonably necessary to estimate relocation costs").

requirements in the unclassified context would hinder the ability of bidders to evaluate the true costs of their participation in the auction while, as previously recognized by the Commission, serving no compelling countervailing purpose such as the protection of important national security information. Accordingly, the disclosure requirements should be particularly rigorous in the unclassified context.

B. NTIA's Proposed Disclosure Requirements for Classified and Sensitive Facilities and Services Are Unnecessarily Strict

Even when legitimate national security concerns exist, disclosure should be as complete as possible. NTIA proposes that, prior to auction, potential bidders would be entitled only to a "single, consolidated, and unclassified" figure for the cost of relocating, retuning or modifying classified systems and frequency users.¹⁷⁷ Slightly more information might be available if the Commission were to determine that the information submitted to it by NTIA could be broken down by license service area and spectrum block, consistent with national security concerns. Otherwise, all information relevant to the bidding process would be withheld until after an auction winner is declared. Such a procedure would place the bidders in an untenable position -- relying entirely on an unverifiable estimate of costs created by an unknown methodology by a financially-interested government entity with no real-world cost pressures informing its calculations.

Although national security concerns may support some lesser standard of disclosure than in the unclassified context, far less restrictive methods are available. For instance, essential bidding information could be disclosed to company representatives who have the proper security clearances. In addition, a neutral panel, mutually agreed upon by the affected government and industry parties and having the proper security clearances, could be established to review the

submitted information. Similarly, an independent consultant with necessary clearances could evaluate the government's estimate.

Increasing bidder access to essential cost-related information would benefit both bidders and the government. Fundamental fairness requires that, before any auction, potential bidders be provided with the information necessary to evaluate the obligations to which their bids might subject them. Failure to provide such information would deter bidder participation and threaten the viability of the auction. A lack of access to necessary information may also have the opposite -- and equally destructive -- consequence of luring bidders into auctions that they might not otherwise have entered had they fully realized the costs of relocation or the exact nature or limitations of the spectrum for which they were bidding. Such uninformed participation in the auction could have devastating commercial consequences for the bidder (such as bankruptcy) and to the government (such as bidders' default on awarded licenses and unused or underutilized spectrum). Accordingly, proper protection of both bidders and the auction process requires the Commission to consider carefully all options for ensuring full and fair disclosure, pre-auction, of the costs to which bidders might be subjected should they win.

III. AN EFFICIENT MECHANISM FOR THE PAYMENT OF RELOCATION COSTS SHOULD BE ESTABLISHED.

NTIA proposes the adoption of a cost-sharing plan that would apply in situations in which the potential requirement to reimburse a federal entity for relocation costs could disproportionately fall upon one potential bidder or licensee.^{18/} AT&T believes that a superior option for funding relocation costs would be to use auction proceeds to pay those expenses rather

^{17/} NTIA NPRM ¶¶ 44-45.

^{18/} *Id.* at ¶¶ 29-30.

than requiring licensees to pay those costs in addition to the price paid for the spectrum itself.^{19/}

Such an approach would encourage government entities to relocate in the most efficient and cost-effective manner so that largest possible balance from the auction remained for deposit in the federal Treasury. Moreover, the presence of a guaranteed source of funds for relocation would provide affected federal entities with additional certainty that legitimate relocation costs will be fully and timely paid. Finally, reducing the overall financial obligations of potential bidders to payment for the spectrum itself would increase the number of bidders that could participate in the auctions and thereby promote competition.

If Congress does not authorize the use of proceeds for funding relocation, AT&T agrees with NTIA that a cost-sharing plan should be adopted. One option would be to model any cost-sharing plan on the rules applied to the relocation of microwave users. Although the cost-sharing rules in that context have generally worked well, added detail regarding certain problem areas would speed relocation, increase the fairness and efficiency of reimbursement, and reduce conflict. For instance, a specific list of excluded costs and a more detailed definition of the meaning of comparability (*e.g.*, analog-to-analog, static number of channels) under the plan would decrease disputes over the wide variety of costs that may legitimately be claimed under any cost-sharing plan. Other issues, such as the cap levels set for replacement of certain equipment and the application of premium payments under the rule, should also be modified if applied in the current context. Regardless of the precise details of the plan, however, any clearinghouse established to implement cost-sharing procedures should be industry-run and funded by auction proceeds.

^{19/} See Comments of Motorola, Inc., E.T. Docket No. 00-258, at 15-16 (filed Feb. 22, 2001).

In addition, NTIA should clarify the limited role of auction winners in the implementation of the actual relocation process. The licensee's responsibility is merely to reimburse federal entities for costs that such entities incur from relocating, and not to plan, run, or supervise the relocation process.^{20/} NTIA should therefore clarify, that the federal entity -- rather than the licensee -- would actually implement the relocation, taking care of all related matters such as negotiating and contracting for supplies and services, supervising any construction or equipment installation and inspecting completed work. Moreover, because of the control exercised by the federal entity over both the planning and the implementation of the relocation, it should have no reimbursement rights to cost overruns ten percent or more over its initial pre-auction estimate (relied upon by bidders) or any other number negotiated following auction. When smaller overruns occur, auction winners should be required only to negotiate in good faith regarding payment of such costs. Similarly, should the government fail to complete relocation within the time frame as estimated pre-auction (and relied upon by bidders) or a subsequently negotiated schedule, the auction winner should be allowed to move into the spectrum, with the government user assuming secondary status until relocation can be completed. Clarification that responsibility for the actual process of relocation falls upon the federal entity and adoption of rules enforcing cost and scheduling agreements should speed the completion of relocation, increase its efficiency and cost-effectiveness, and provide both licensees and federal entities with increased certainty regarding the manner in which the process will proceed.

^{20/} See 47 U.S.C. 923(g)(1)(B).

IV. REASONABLE BOUNDARIES SHOULD BE SET FOR REIMBURSEMENT RIGHTS.

AT&T agrees with NTIA's proposed limitation of reimbursement to assignments within the designated bands authorized before October 17, 1998, when the National Defense Authorization Act for Fiscal Year 1999 was signed into law. The costs of relocation of assignments requested by federal entities after they knew of the plans for reallocation should be borne by those entities rather than commercial entities. Any other policy would unjustly enrich the federal entities.^{21/}

AT&T believes that NTIA should adopt a similar sunset provision limiting the availability of reimbursement when no claim has been made after a reasonable period of time. Although, as NTIA notes, the Defense Authorization Act of 1999 does not expressly provide a sunset provision, neither does it preclude the adoption of one.^{22/} Indeed, regulatory adoption of a sunset provision would be consistent with previous Commission actions addressing reimbursement obligations in other relocation contexts. The rules governing microwave relocation from the 1850-1990 and 2110-2160 MHz bands, fixed microwave services relocation from the 18.58-19.30 GHz band, private land mobile radio services relocation from the upper 200 channels in the 800 MHz band to EA licensing, for example, all contain sunset provisions despite the absence of any statutory language expressly providing for the termination of reimbursement rights relating to relocation.^{23/} The adoption of such a requirement here would

^{21/} NTIA NPRM ¶ 25.

^{22/} *Id.* at ¶ 32 (proposing the rejection of a sunset provision because the Defense Authorization Act of 1999, which mandates reimbursement, does not include statutory language limiting the time period for reimbursement).

^{23/} *See* 47 C.F.R. § 24.253 (authorized by 47 U.S.C. §§ 154, 301, 303, 309, 332); 47 C.F.R. § 101.79 (authorized by 47 U.S.C. §§ 154, 303); 47 C.F.R. § 101.95 (authorized by 47 U.S.C. §§

further the general legislative and regulatory goal of increasing commercial access to spectrum, which underlies recent efforts to increase the efficiency of spectrum allocation and use.^{24/} In addition, adoption of a sunset provision would increase industry certainty regarding the scope of potential reimbursement costs, thus permitting industry members to estimate their potential budgets accurately and free capital for future auctions. Certainty regarding the scope of potential financial restraints also would permit industry members to allocate their limited funds more rationally in bidding for particular blocks of spectrum.

In addition, the Commission and NTIA should narrowly construe the government's right to reclamation under 47 USC § 923(i)(3), which requires commercial users to take reasonable steps to remedy defects or move federal entities back to their original spectrum once such entities establish that the new facilities are not comparable to their original facilities. Once dismantled, radio equipment would not be retained by either the new or old licensee, and relocating federal government stations to the original spectrum thus would be very costly. The imposition of such burdens on licensees is particularly inappropriate when federal entities have failed to promptly raise such comparability issues promptly with the responsible licensees. Given the costs. Federal entities should have to meet a high standard to establish that their current facilities are not comparable to their original facilities and, in any event, the Commission or NITA should establish a method for quick and fair resolution of any disputes arising during implementation of the relocation process.

154, 303); 47 C.F.R. § 90.699(f)(5) (authorized by 47 U.S.C. §§ 47 U.S.C. § 154(i), 161, 303(g), 303(r), 332(c)(7)); 47 C.F.R. § 90.699(f)(5) (authorized by 47 U.S.C. §§ 154(i), 303(g), 303(r), 332(c)(7)).

^{24/} See 47 U.S.C. § 922(4); see generally *Spectrum Allocation Principles; Efficient Use of Spectrum*.

V. PROMPT ACTION BY THE COMMISSION AND NTIA IS ESSENTIAL.

In light of the fast-approaching deadline of the mandated auctions, expeditious action by both the Commission and NTIA in promulgating effective and fair reimbursement rules is essential. By statutory mandate, assignment of the licenses or permits that are the subject of this proceeding must be completed by September 30, 2002.^{25/} Thus, within just under 19 months from the date of this filing, both the NTIA and Commission rulemakings must be completed, the relevant auctions must be scheduled, the proper information regarding marginal costs must be compiled by the affected federal entities and forwarded to NTIA and then to the Commission and potential bidders, and the auctions must be completed.

Assuming that the deadlines regarding cost notification proposed by the NTIA NPRM are adopted, as they should be, the reallocation schedule will be particularly compressed. Specifically, under NTIA's proposed rules, affected federal entities must notify NTIA of their expected relocation costs by February 4, 2002. Thus, in less than a year, the Commission and NTIA must complete their rulemaking proceedings and issue final rules, and the affected federal agencies must -- in accordance with those newly issued rules -- develop relocation, modification, or sharing plans and cost estimates for submission to NTIA. Because potential bidders should have access to expected relocation costs as far in advance of the auction as possible to permit full evaluation of the data and the development of accurate bidding strategies, AT&T urges the Commission and NTIA to conclude this proceeding expeditiously.

^{25/} See 47 U.S.C. § 923(b)(3); 47 U.S.C. § 925(c)(2).

CONCLUSION

For the foregoing reasons, the Commission should work closely with NTIA to promulgate fair rules, consistent with these comments, for the reimbursement of government entities that vacate reallocated spectrum.

Respectfully submitted,

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I, Catherine Carroll hereby certify that on this 8th day of March, 2001, a copy of the foregoing Comments of AT&T Wireless Services, Inc. were hand delivered to the following:

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