BEFORE THE
FEDERAL COMMUNICATIONS Commission
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed And Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands	)	WT Docket No. 03-66 RM-10586
	)	
Part 1 of the Commission's Rules – Further Competitive Bidding Procedures	)	WT Docket No. 03-67
	)	
Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and the Instructional Television Fixed Service to Engage in Fixed Two-Way Transmissions	)	MM Docket No. 97-217
	)	
Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Licensing in the Multipoint Distribution Service and in the Instructional Television Fixed Service for the Gulf of Mexico	)	WT Docket No. 02-68 RM-9718

COMMENTS OF C&W ENTERPRISES, INC.

C&W Enterprises, Inc. ("C&W"), hereby submits it comments to the *Report and Order and Further Notice of Proposed Rulemaking* ("Order")[1] in the above-referenced proceeding. Petitioner is licensee of Broadband Radio Service ("BRS") spectrum, lessee of various BRS and Educational Broadband Service ("EBS") licenses and is currently operating a video system and providing data services in San Angelo, Texas.

[1] Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, *Report & Order and Further Notice of Proposed Rulemaking*, 19 FCC Rcd 14165 (July 29, 2004). A synopsis of the Order was published in the Federal Register on December 10, 2004. 69 Fed. Reg. 72020.

I. Substantial Service Requirements

C&W supports the adoption of substantial service performance requirements, particularly those currently used in Part 27 of the rules for other wireless services. Such requirements should allow for safe harbors already in place for such similar services, as well as the new rural safe harbors set forth in the Rural NPRM.[2] C&W is opposed to imposing stringent operation and construction requirements, as recommended by IPWireless, as different markets will require different build-out strategies and timeframes and such requirements would merely hinder business planning.[3] Rather, the imposition of a license renewal deadline in which a licensee must prove that it is operating and using the spectrum which it holds (or will shortly due to expansion of its business, as evidenced by showing sufficient growth over the past year or more) should be sufficient to ensure that such spectrum is not warehoused.

II. Auctioning of Spectrum

The Commission has requested comments on how to determine the annual gross revenues of a non-profit or educational entity for purposes of determining bidding credits in an auction of EBS spectrum. C&W recommends foregoing the measurement of the annual revenues of such entities and instead, using the attribution rules currently in place in Part 1 of the FCC rules, look to the revenues of any entity with which the school or non-profit organization holds any agreement to use spectrum won in the auction. The Commission should encourage any educational institution that does not create such an alliance or agreement in order to gain financing to participate in the auction by providing such independents with even greater benefit and extensive unprecedented discounts to allow them to effectively bid against their financially backed competitors.

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[2] 18 FCC Rcd. 20824.

[3] See Paragraph 327 of Order.

Since it is unlikely that an auction will be conducted prior to 2009 at the earliest, C&W would prefer that the Commission hold one auction that includes all available spectrum to facilitate the disbursement of such spectrum to all interested entities on an expedient basis.

Finally C&W would prefer that the Commission not further complicate the licensing of Broadband Communications Service ("BCS") spectrum and auction it as currently licensed as opposed to dividing them into LBS, MBS or UBS licenses.

III. The Commission Should Provide an Alternative to Licensees Not Transitioned at the End of the Three Year Period

C&W is concerned with the statements in paragraphs 81-83 in which the Commission contemplates that any licensee for which a transition plan has not been implemented at the end of three years from enactment of the new rules, or by January 10, 2008, shall have to face the possibility of having to lose its license and requests that an additional period be implemented. There will be situations after the three year period in which certain markets are not transitioned for various reasons, such as lack of a BTA authorization holder to initiate a transition due to a default on the BTA payments or bankruptcy of the operator expected to be a Proponent in a particular market. Rather than render such licensees without recourse, the Commission should provide an additional one year period in which individual licensees can self-transition their stations without having to take on the task of transitioning a whole market or BTA.

Such a plan would meet the Commission's goal of having a definitive date by which all transitions must occur to provide certainty to the process and should meet the Commission's goals in setting up an auction of remaining spectrum within a reasonable time after the end of the three year period. Since inoperation is permitted as part of the transition process pursuant to Section 27.1234 of the new rules and substantial service requirements will not have to be met until a station's license renewal period (allowing for

additional time in which to remain dark, if necessary, to prevent interference to other licensees who have yet to transition), self-transitioning individual licenses at this juncture could be accomplished. C&W recommends that rules for such self-transitioning should mirror those in Section 27.1231 in which the licensee (or group of licensees, if desired) provide notice to other license holders in the BTA and to the FCC. However, such rules should not include a need for any engineering analyses to make the transition or allow for adjacent licensees who also have not transitioned to object to such transition on the basis of interference or other reasons. In addition, any EBS licensee that is forced to self-transition to maintain its license should be reimbursed by the BTA authorization holder, even if such holder cannot be determined until after an auction.

IV. Geographic Areas for New Licenses.

The Commission has recommended issuing new licenses using Metropolitan Economic Areas ("MEAs") for Upper and Lower Band Spectrum and Economic Areas ("EAs") for Mid-Band Spectrum. C&W believes that such new licensing structures would only further confuse an already complicated licensing scheme and requests that Basic Trading Areas be used for any new licenses issued. This would both simplify the licensing process by maintaining the process currently in place, as well as minimize the size of licenses allowing for a greater number of users. If the Commission were to issue licenses using MEAs, such licenses at auction, particularly an ITFS auction, would limit the number of participants vying for such a license as the area would likely be greater than a smaller entity would want to acquire and the cost for such additional area would most likely be prohibitive enough to only allow for a larger company to acquire it. Such a situation would only prohibit smaller operators from being able to seek such licenses or provide market specific services. While there are a number of companies seeking to provide nationwide service, there are many smaller providers who seek to provide service to a specific market or state who would not be able to compete for larger licenses. By

issuing licenses that only cover large areas, the Commission is effectively deterring small business competition in this band.

V. ITFS 4 Channel Rule

C&W applauds the Commission's decision in eliminating the four channel rule post-transition and supports the elimination of such rule pre-transition as well. Such elimination would actually ease the transition process in some circumstances, as certain ITFS / EBS license holders may not want to participate in the process to transition their spectrum but would rather assign their license to another entity. One of the major issues in providing service using this spectrum is having to negotiate with multiple licensees just to acquire enough spectrum to operate. Rather than upholding the fiction of finding any educational entity or non-profit organization that meets the eligibility requirements just to hold a license for an operator's use, the Commission's rules should encourage those educational entities that are truly interested in acquiring such spectrum to acquire as much needed for their services, as they are more likely to understand how such licenses can be used and seek to develop services using such spectrum.

CONCLUSION

C&W requests that the Commission consider its comments when enacting its rules in this proceeding and thanks it for its consideration in this important matter.

Respectfully submitted,

C&W Enterprises, Inc.

By _/s/ John W. Jones, Jr._____
John W. Jones, Jr.
CEO / President

January 10, 2005