

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 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
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)	
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
)	
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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
)	
)	
Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets)	WT Docket No. 00-230
)	

**PETITION FOR RECONSIDERATION
OF THE CATHOLIC TELEVISION NETWORK
AND THE NATIONAL ITFS ASSOCIATION**

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SUMMARY

The Catholic Television Network (“CTN”) and the National ITFS Association (“NIA”) represent the interests of the majority of Educational Broadband Service (“EBS”) licensees in the United States. They also are members of the original coalition that submitted the white paper that led to the initial Notice of Proposed Rulemaking in this proceeding (the “Coalition Proposal”). While CTN and NIA support most of the new rules adopted in the *Report and Order*, there are several issues that must be addressed on reconsideration.

Our most serious concerns arise from instances where the Commission deviated from the carefully crafted and delicately balanced Coalition Proposal, which took years to develop with input from dozens of stakeholders in both the commercial wireless industry and the educational community. Quite simply, by picking and choosing from some elements of the Coalition Proposal, and rejecting others in favor of alternative proposals, the Commission has wreaked havoc on some of the most basic elements of the transition plan proposed by the Coalition. It is imperative that these problems be addressed now. Otherwise, the very essence of what the Coalition and the Commission want to achieve (the rapid deployment of new services in the 2.5 GHz band) will be lost to interference disputes, legal challenges, and infighting among licensees and other users in the band. This clearly is not in the public interest.

Transitions to the New Band Plan. The Commission should reconsider its decision to transition markets by Major Economic Areas. Major Economic Areas are simply too large. As an alternative, the Commission should permit proponents to transition markets by smaller Basic Trading Areas, as proposed today in a Petition for Partial Reconsideration filed by the Wireless Communications Association International, Inc. (“WCA”). Moreover, irrespective of whether markets are transitioned by Major Economic Area, Basic Trading Areas or some other means, CTN and NIA strenuously oppose the Commission’s plan to force EBS licensees operating in markets that have not been transitioned by a proponent by a date certain to discontinue operations and face the prospect of losing their licenses. Such a plan is both unfair and detrimental to the interests of education. As an alternative, CTN and NIA propose a mechanism by which EBS licensees will be able to self-transition.

Geographic Area Licensing (Two-Way Service Pre-Transition). The Commission should prohibit or strictly limit the deployment of two-way, cellular systems in the 2.5 GHz band prior to transition to the new band plan. The Commission’s apparent decision to permit two-way operations prior to transition is astonishing given the Commission’s clear recognition – both in this proceeding and in the 800 MHz Public Safety proceeding – that there is a very real danger of harmful interference created by an incompatible mix of high-power, high-site systems and low power, two-way cellularized systems on interleaved channels. There is no rational basis for the Commission to permit two-way operations on a pre-transition basis, especially in light of the Commission’s long struggle to resolve nearly identical interference issues in the 800 MHz Public Safety band. Accordingly, this error must be corrected on reconsideration.

Geographic Area Licensing (D/U Ratios Before and After Transition). The Commission should add a desired-to-undesired (“D/U”) ratio interference protection requirement that applies to fixed transmitters not only at the moment of transition (as is required in new Section 27.1233(b)(3)), but also *before* and *after* the transition. Such a requirement is necessary to protect EBS receive sites from co-channel and adjacent-channel interference caused by new or modified fixed transmission facilities, and can be implemented in a manner that does not require the filing of applications or other significant Commission intervention. As recognized in the Coalition Proposal and in the Commission’s adoption of Section 27.1233(b)(3), D/U ratios are a necessary component of a successful transition to the new band plan.

Replacement Downconverters. Section 27.1233(a)(iv) should be revised to require the installation of replacement downconverters at any eligible receive site within a licensee’s former Protected Service Area, even the if the receive site falls outside of the licensee’s newly-established Geographic Service Area. This revision will reduce the likelihood of *actual* interference to such sites without adverse affect on the Commission’s geographic area licensing regime.

Transition Safe Harbors. The Commission should adopt two additional safe harbors originally proposed by the Coalition, which define in advance what is considered “reasonable” in a proponent’s transition plan. The two additional safe harbors cover situations that will occur over-and-over again and involve matters that are ripe for dispute.

License Forfeitures and Reversions to BTA Licensees. The Commission should clarify that when an existing license is forfeited, the right to operate in that area on the frequencies represented by the forfeited license “reverts” to the BTA licensee only with respect to forfeited licenses on channel groups that are presently allocated to the BRS. This is properly reflected in Section 27.1206(b) of the new rules, however, is somewhat ambiguous in the text of the *Report and Order*.

Secondary Markets and Substantive EBS Requirements. The Commission should revise Section 27.1214 to correctly incorporate all of the existing substantive use requirements that have historically applied to ITFS in the context of spectrum leasing. The Report and Order acknowledges the Commission’s intent to carry over these requirements, however, the new rules do not include the necessary wording to effectuate the Commission’s intent. In addition, Section 1.9047, which refers back to Section 27.1214 to apply these requirements in the secondary markets context, needs to make clear that, with respect to *de facto* transfer leases only, two of the requirements will not be applicable.

Miscellaneous Issues and Corrections. The Commission should eliminate the Four Channel Rule in Section 27.5(i)(3). Elimination of the rule will provide EBS licensees with additional flexibility to implement transitions. Section 27.1201(c), which provides for the licensing of wireless cable entities on ITFS channels under certain circumstances,

also should be eliminated in its entirety because it has outlived its purpose. Finally, typographical errors in the footnote to Section 27.5(i) and in Section 27.1221 should be corrected.

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To: The Commission

**PETITION FOR RECONSIDERATION
OF THE CATHOLIC TELEVISION NETWORK
AND THE NATIONAL ITFS ASSOCIATION**

Pursuant to Section 1.429 of the Commission's rules, the Catholic Television Network ("CTN") and the National ITFS Association ("NIA"), by their attorneys, hereby submit this Petition for Reconsideration ("Petition") of the Commission's Report and Order in the above captioned matter.¹

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 and Order ("Report and Order") and Further Notice of Proposed Rulemaking*

I. Introduction

CTN is an association of Roman Catholic archdioceses and dioceses that operate many of the largest parochial school systems in the United States. CTN's members use Educational Broadband Service ("EBS") frequencies to distribute educational, instructional, inspirational, and other services to schools, colleges, parishes, community centers, hospitals, nursing homes, residences, and other locations. Collectively, CTN's members serve over 600,000 students and 4,000,000 households throughout America.

NIA, established in 1978, is a non-profit, professional organization of EBS licensees, applicants and others interested in EBS. The goals of the NIA are to gather and exchange information about EBS, to act as a conduit for those seeking information or assistance about EBS, and to represent the interests of EBS licensees and applicants.

As both representatives of EBS licensees and members of the original coalition that submitted the white paper that led to the 2003 Notice of Proposed Rulemaking in WT Docket No. 03-66, CTN and NIA have a significant stake in the outcome of this proceeding.² The *Report and Order* represents a significant step forward in the Commission's efforts to promote the rapid deployment of broadband services in the 2.5 GHz band, while at the same time, providing spectrum to meet the future needs of the

("FNPRM"), FCC 04-135 (rel. July 29, 2004), 19 FCC Rcd 14165 (2004). A summary of the *Report and Order* was published in the Federal Register on December 10, 2004, 69 Fed. Reg. 72,020.

² See "A Proposal for Revising the MDS and ITFS Regulatory Regime" filed by the Wireless Communications Association International, Inc. ("WCA"), NIA and CTN on October 7, 2002 ("Coalition Proposal"); see also *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*, Notice of Proposed Rulemaking and Memorandum Opinion and Order, FCC 03-56 (rel. April 2, 2003), 18 FCC Rcd 6722, 6734 (2003) ("2003 NPRM and MO&O").

educational community, including the continuing need for high-power high-site video and data transmission facilities in the 2.5 GHz band.³

CTN and NIA applaud the Commission for its efforts in this proceeding and support most of the new rules adopted in the *Report and Order*. However, as discussed more fully below, certain changes are essential if the Commission's objectives are to be realized and the interests of the educational community are to be served. Most of the changes proposed herein are already set forth in the Coalition Proposal and filings made by CTN and NIA jointly in response to the Notice of Proposed Rulemaking in this proceeding.

II. Transitioning to the New Band Plan

CTN and NIA have serious concerns with the process by which EBS licensees will be transitioned to the new band plan. Most notably, under the Commission's new rules, educators would be at risk of losing their EBS licenses if they happen to be located in a market that has not been transitioned to the new band plan by a date-certain designated by the Commission.⁴ Accordingly, CTN and NIA seek reconsideration of two aspects of the transition plan.

³ See Comments of WCA, NIA and CTN filed on September 8, 2003 at 14 ("The continuation of high-power, high-site operations in the 2.5 GHz band is critical to the many educators across the country using high-power, high site facilities to broadcast video instructional and educational programming on which both teachers and students rely. High-power, high-site broadcasting is the only currently affordable means to deliver this programming in most instances. Shutting down high-power high-site operations ... is not an acceptable option.")

⁴ Under the new rules, transitions will be coordinated by one or more proponents who will be responsible for relocating EBS video operations to the high power Mid Band Segment ("MBS") of the 2.5 GHz band and replacing all downconverters at eligible EBS receive sites. See *Report and Order* at ¶ 79 and new Section 27.1230. Transitions will occur in phases by Major Economic Area ("MEA"). See *Report and Order* at ¶ 78 and new Section 27.1231. Educators operating in MEAs for which a transition plan has not been filed within three years, face the possibility of having to discontinue operations and losing their EBS licenses 18 months thereafter (*i.e.*, within 4 ½ years after the effective date of the rules). See *Report and Order* at ¶ 81 ("In markets where no transition plan is filed, we will not require licensees to cease existing operations until at least eighteen months after the deadline for proponents to file initiation plans. ... Under any alternative transition scenario we adopt, we contemplate that it would take most or all of the 18-month

First, CTN and NIA seek reconsideration of the requirement that markets be transitioned by MEAs. Certainly, few if any educational EBS licensees will have the financial resources necessary to effectuate such transitions. MEAs are so large that even many commercial licensees will likely be unable to afford acting as proponents to transition such extensive geographic areas. Rather than speed deployment of wireless broadband services, the MEA transition requirement may actually delay or deter such deployment. As an alternative to the use of MEAs, CTN and NIA support the proposal being put forward today by the WCA to transition markets by Basic Trading Areas (“BTAs”).⁵ There are 497 BTAs as opposed to 51 MEAs, which will make transitions more manageable and affordable, and thus, speed the rollout of new wireless services.

Second, irrespective of whether markets are transitioned by MEAs, BTAs or some other means, CTN and NIA vociferously oppose the Commission’s plan to force EBS licensees operating in markets that have not been transitioned to discontinue operations and face the prospect of losing their licenses. Frankly, it is shocking that the Commission would adopt such a plan given all that the Commission has said about the importance of preserving the educational mission of EBS licensees.⁶ It is both unfair and detrimental to

period to institute the transition mechanism we adopt, conduct any necessary auctions, and have any new licensee ready to offer service.”)

⁵ See *WCA Petition for Partial Reconsideration* in WT Docket No. 03-66 filed January 10, 2005 (“WCA Petition for Partial Reconsideration”).

⁶ See e.g., *2003 NPRM and MO&O* at ¶ 2 (“We emphasize, however, that we do not intend to evict any incumbent licensees from the affected band if they have been in compliance with our rules and continue to comply with our rules when we modify or augment them nor do we intend to undermine the educational mission of ITFS licensees. Far from evicting existing licensees, we anticipate that the streamlined regulations and revised spectrum plan adopted in this proceeding will facilitate the provision of advanced wireless communications services by incumbent licensees.”). See also *Report and Order* at ¶ 152 (“[W]e conclude that it is in the public interest to retain EBS eligibility and content restrictions. We believe that the public interest favors preserving this spectrum for licensing to EBS-eligible entities and that doing so will further the educational objectives that led to the establishment of EBS. The record demonstrates that the EBS service provides critical educational services such as web-based and streaming video for instruction in adult literacy and basic skills, emergency medical and fire services, law enforcement, and

the interests of education for EBS licensees to face the prospect of losing their licenses for reasons entirely beyond their control (*i.e.*, the failure of market forces to drive band plan transitions within the arbitrary timeframe set by the Commission).

Unless the transition plan is revised, EBS licensees will find themselves victims of both the Commission's flash-cut transition mechanism and the business plans of commercial operators who may, or may not, transition markets within the Commission's arbitrary deadline due to market, financial, technology or other considerations. Stated differently, unless the new rules are revised, the transition mechanism will amount to a "back door" means of doing exactly what the Commission said it would not do -- revoke EBS licenses held by educators so that they can be auctioned off to the highest (*i.e.*, commercial) bidder.⁷

To avoid playing "Russian Roulette" with spectrum held by educational licensees, CTN and NIA urge the Commission to revise its rules to provide that EBS licensees may "self-transition" to the new band plan if a commercial proponent does not step forward to transition a market. Specifically, in any market where a proponent has not filed an initiation plan by January 10, 2008 (or such other deadline as the Commission may ultimately adopt in this proceeding),⁸ any EBS licensee should be permitted to certify,

corrections. These services are often provided by community colleges at a variety of locations across the state where such instruction would generally be unavailable").

⁷ See *Report and Order* at ¶ 83. ("[I]f a transition is not initiated within three years of the effective date of the rules, we conclude that we will use another method of transitioning an MEA. We note that we are seeking comment on alternative methods in the NPRM [sic] attached to this Report and Order for transitioning these MEA(s)."). See also *FNPRM* at ¶ 290 ("In summary, the proposal presented here calls for the Commission to adopt rules to *clear current spectrum assignments from the band....*") (Emphasis added).

⁸ Pursuant to new Section 27.1231(b), January 10, 2008 is the deadline for a proponent to submit an initiation plan. The WCA is proposing that the deadline for filing initiation plans be modified so as to fall no earlier than thirty (30) months after the effective date of any order on reconsideration of the *Report and*

within 60 days of the Commission's release of a public notice announcing markets for which transition plans were not filed by the deadline, its intention to effectuate a self-transition.⁹ In non-transitioned markets, EBS licensees that do not provide such certifications would continue to face the risk of losing their licenses. However, EBS licensees that provide such certifications and then later modify their facilities accordingly, would retain control over their licensed spectrum.

A self-transition would require an EBS licensee, on the deadline ultimately established by the Commission for the termination of operations under the old band plan, to cease all operations on the Lower Band Segment ("LBS") and Upper Band Segment ("UBS") channels in the 2.5 GHz band so as to permit other licensees in the area to begin operations on that spectrum pursuant to the Commission's new band plan.¹⁰ At the same time or thereafter, any EBS licensee that wants to continue or re-institute high power service on its channels would need to retune one of its transmitters for operation in the MBS pursuant to the new band plan.¹¹

Order reducing the size of the transition areas from MEAs to BTAs. *See* WCA Petition for Partial Reconsideration. CTN and NIA support the WCA's proposed modification to Section 27.1231(b).

⁹ The Commission has already proposed that the Wireless Telecommunications Bureau issue a Public Notice at the conclusion of the three year transition period specified in Section 27.1231. *See FNPRM* at ¶ 301.

¹⁰ The Commission contemplates that the deadline for termination of operations under the old band plan will be approximately 18 months following the close of the three year period during which proponents may file initiation plans (*i.e.*, 4 ½ years from January 10, 2005). *See Report and Order* at ¶ 81. The termination of transmissions on the old band plan channels should be all that is required for an EBS licensee to self-transition and thereby preserve its license.

¹¹ EBS licensees authorized on four C or D group channels would not need to retune their high power transmitters since channels C4 and D4 remain in the same place under both the old and new band plans. However, other EBS licensees would need to retune their high power transmitters to comport with the new MBS band plan. In situations where a four channel EBS licensee is using two or more channels for the delivery of analog video programming, the licensee will need to digitize its new MBS channel so as to accommodate multiple video program tracks. The Commission's rules should provide that the expenses incurred by the EBS licensee to retune and/or digitize its MBS channel(s) are subject to reimbursement by any commercial entity that subsequently uses any LBS or UBS channels within any portion of the geographic areas served by the EBS licensee. This will prevent commercial operators, who otherwise

Commercial operators leasing self-transitioned EBS spectrum or EBS licensees themselves (both referred to herein as “Two-Way Operators”) will likely want to launch two-way fixed or mobile services on self-transitioned LBS or UBS channels at the time of self-transition or thereafter. In order to permit such two-way services to co-exist on an interference free basis with high-power operations in the MBS, upgraded downconverters must be installed at existing EBS receive sites within the vicinity of the new LBS/UBS operations.¹²

In order to provide for the installation of upgraded downconverters, CTN and NIA recommend using a process similar to that planned for proponent-driven transitions.¹³ Specifically, any Two-Way Operator seeking to commence operations on self-transitioned LBS or UBS channels would be required to send a written data request (“EBS Data Request”) to all EBS licensees with MBS transmitter sites located within 20 miles of the nearest proposed LBS/UBS two-way base station to be constructed by the Two-Way Operator.¹⁴ The Two-Way Operator would be required to include its full name, postal mailing address, contact person, e-mail address, and phone and fax numbers in the EBS Data Request.

would have acted as transition proponents, from waiting on the sidelines until a market has self-transitioned in an effort to avoid the expense and trouble of acting as a proponent under the Commission’s rules.

¹² Prior to the time that a Two-Way Operator actually commences operations on the self-transitioned LBS or UBS channels, replacement downconverters would not be required. However, as discussed *infra* at note 13, when LBS or UBS operations commence, MBS receive sites will need the protection offered by the new downconverters specified in Section 27.1233 (a) (2) of the Commission’s rules.

¹³ See Section 27.1231(f) of the Commission’s rules.

¹⁴ Replacement downconverters are needed to prevent upstream transmissions from two-way base stations and from two way mobile devices from interfering with reception of high-power video signals at EBS receive sites. See Coalition Proposal at Appendix B page 5 (“To provide the requisite protection against interference from cellularized services in the LBS and UBS, the Proponent should be required to install at every eligible ITFS receive site a highly linear downconverter designed to minimize the reception of signals from outside the MBS.”). The proposed 20 mile buffer should be adequate to protect such receive sites. See attached Engineering Statement of Hammett and Edison.

Within sixty (60) days of receipt of the EBS Data Request, all such EBS licensees would provide to the Two-Way Operator the location (by street address and by geographic coordinates) of every constructed EBS receive site that, as of the date of receipt of the EBS Data Request, would be entitled to a replacement downconverter pursuant to Section 27.1233(a) of the Commission's rules. In addition, all such EBS licensees would indicate whether the downconverting antenna is mounted on a structure attached to the building or on a free-standing structure, and specify the approximate height above ground level of the downconverting antenna. Any EBS licensee that fails to timely respond to the EBS Data Request would be ineligible to receive upgraded downconverters.

Upon receipt of responses to the EBS Data Request, the Two-Way Operator would have discretion to proceed or not proceed with the installation of replacement downconverters at all MBS receive sites located within 20 miles of the nearest proposed LBS/UBS two-way base station to be constructed by the Two-Way Operator.¹⁵ If the Two-Way Operator decides to proceed with installation of upgraded downconverters, such downconverters would be installed at the Two-Way Operator's expense; provided however, that in situations where the Two-Way Operator is an EBS licensee, such expenses would be subject to reimbursement by any commercial entity that subsequently uses the LBS or UBS channels within any portion of the geographic area served by the EBS licensee. If the Two-Way Operator later wants to expand its two-way service area by adding new two-way base stations, the Two-Way Operator would have to expand the

¹⁵ If the Two-Way Operator decides not to proceed with the installation of replacement downconverters, it could not launch service on the LBS/UBS channels.

area of downconverter upgrades commensurately, subject to reimbursement of expenses (if the Two-Way Operator is an EBS licensee) by any commercial entity that subsequently uses any portion of the expanded geographic area served by the Two-Way Operator.

III. Replacement Downconverters

Section 27.1233 of the Commission's new rules provide that a proponent must install at every eligible EBS receive site a downconverter designed to minimize the reception of signals from outside the MBS. However, Section 27.1233(a)(iv) provides that only receive sites within an EBS licensee's GSA are eligible for replacement downconverters.¹⁶ Consistent with the Coalition's original proposal, CTN and NIA ask that Section 27.1233(a)(iv) be revised to require the installation of new downconverters at all eligible EBS receive sites within a licensee's former PSA.¹⁷ While the Commission has decided not to offer interference protection to receive sites located outside of a licensee's GSA, there are good reasons for the Commission to require that downconverters be provided even for sites that are outside a GSA.¹⁸

GSA boundaries do not generally track school district or other educational service boundaries. Thus, regardless of GSA boundaries, there will be a continuing need for existing EBS receive sites to receive educational programming from MBS transmission

¹⁶ See also *Report and Order* at ¶¶ 94 and 95.

¹⁷ See Coalition Proposal at Appendix B pages 5-6.

¹⁸ CTN and NIA must reluctantly acknowledge that under a geographic licensing approach, which promises significant benefits for both EBS and BRS licensees, *formal* interference protection must be ended for receive sites outside of a station's GSA. Nonetheless, CTN and NIA are concerned about the prospect of disenfranchising schools having receive sites within current PSAs but outside new GSAs. Adoption of CTN's and NIA's proposed change to Section 27.1233(a)(iv) will increase the likelihood that many such receive sites will actually be able to continue to receive EBS transmissions.

facilities, even if a receive site happens to be on the “wrong” side of a licensee’s truncated PSA – its GSA. The rule change proposed by CTN and NIA will reduce the likelihood of *actual* interference to receive sites located outside of a licensee’s GSA, but within its PSA. By adopting the rule change suggested by CTN and NIA, the Commission will support the efforts of educators to maintain programming at as many sites as possible, without adverse effect to the Commission’s geographic area licensing scheme.

IV. Geographic Area Licensing

CTN and NIA have significant concerns with the potential for harmful interference created by the Commission’s new geographic area licensing rules. Pursuant to Section 27.1206(a), Broadband Radio Service (“BRS”) and EBS licensees will be able to place transmitters anywhere within their GSAs without prior authorization as long as their operations comply with the applicable service rules, do not affect radio-frequency quiet zones, or require environmental review or international coordination.¹⁹ Interference avoidance will be managed through power flux density restrictions at GSA boundaries, emissions masks for out-of-band emissions, and limits on power levels.²⁰ There is no requirement that notice be given to the Commission following construction of individual facilities,²¹ and compliance with desired-to-undesired signal ratios will no longer be required.²²

¹⁹ *Report and Order* at ¶ 54 and § 27.1209(b).

²⁰ Power flux density restrictions are included in Section 27.55; emissions limits are set forth in Section 27.53; and power limits are specified in Section 27.50.

²¹ *Report and Order* at ¶ 193.

²² *Report and Order* at ¶ 108 and note 206.

This new geographic area licensing regime will become effective on January 10, 2005, even though BRS and EBS licensees will not yet have transitioned to the new band plan.²³ While CTN and NIA do not oppose the use of geographic area licensing *per se*, the Commission's new rules have two serious problems that must be addressed.

First, whether by oversight or misplaced design, it appears that beginning on January 10, 2005, the Commission's rules will permit two-way mobile operations throughout the entire 2.5 GHz band, even though the channels in the band are still interleaved (*i.e.*, even though BRS and EBS licensees will not have yet transitioned to the new band plan, which segregates MBS high-power operations from LBS and UBS low power operations). This is of significant concern because a low power upstream mobile handset operating on a channel adjacent to a high power EBS station could cause harmful interference to fixed EBS receive sites.²⁴ Indeed, this is precisely why the Coalition Proposal precluded new deployments prior to the transition to the new band plan.²⁵ This

²³ See *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*, Order, FCC 04-258 (rel. October 29, 2004) at ¶ 2 ("The R&O provides for the immediate implementation of geographic area licensing upon the effective date of the rules. At that time, licensees will be permitted to add new facilities or modify existing facilities in any location within the geographic area in which they are licensed.").

²⁴ Interference may occur because while the EBS transmitter is operating at much higher power than a two-way mobile handset, the mobile handset can be much closer to the EBS receive site. This "near-far" problem is similar to the problem which has consumed so much of the Commission's time trying to resolve interference to public safety operations in the 800 MHz Specialized Mobile Radio band. See *In the Matter of Improving Public Safety Communications in the 800 MHz Band*, Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order, FCC 04-168 (rel. August 6, 2004), 19 FCC Rcd 14969, 14972 (2004) at ¶ 2 ("The interference problem in the 800 MHz band is caused by a fundamentally incompatible mix of two types of communications systems: cellular-architecture multi-cell systems – used by ESMR and cellular telephone licensees – and high-site non-cellular systems – used by public safety, private wireless, and some SMR licensees...").

²⁵ See Coalition Proposal, Appendix B at 1-2 ("[A]n MDS or ITFS licensee should only be permitted, absent a waiver, to modify facilities licensed under the current rules or add new facilities within its GSA under the limited circumstances set forth in note 2 below until the licensee has been transitioned to the new bandplan. Each transition process will require participation by all MDS and ITFS licensees that must transition from the existing bandplan to the new bandplan in order to achieve the objectives of the new bandplan (*i.e.* avoiding interference to cellularized operations from high-power, high-site stations and

also is why the Coalition Proposal provided for the establishment of the J and K guard bands – to avoid post-transition adjacent channel interference to fixed EBS receive sites in the MBS.²⁶ Moreover, in the *Report and Order* itself, the Commission explicitly recognized the need to segregate high-power from low-power services:

By grouping high and low-power spectrum uses into separate portions of the band, this band plan creates opportunities for spectrum-based systems or devices to migrate to compatible bands based on marketplace forces, and reduces the likelihood of interference caused by incompatible uses.²⁷

In addition, with respect to fixed transmitting facilities operating throughout the 2.5 GHz band prior to transitions to the new band plan, the Commission deleted the old interference protection rules, which rely on desired-to-undesired (“D/U”) ratio protection for fixed EBS receive sites, applying instead, the same geographic area licensing rules which are designed to control interference among LBS and UBS licensees. Unfortunately, geographic area licensing rules alone are not adequate to control interference from fixed BRS and EBS transmitters, many of which will continue to operate with high-power at high sites. As demonstrated in the attached Engineering Statement, it is clear that the new geographic area licensing technical rules alone are insufficient to protect MBS receive sites from transmission system changes made by other BRS and EBS licensees.

Notwithstanding the Commission’s acknowledgment of the very clear potential for interference created by incompatible fixed and mobile uses of the band on a pre-

providing a safe haven in which downstream ITFS video programming and data transmissions can continue without interference from consumer-installed fixed, portable and mobile cellularized operations”).

²⁶ See Coalition Proposal, at 14 note 35 (“[T]he interposition of the Transition Bands (the J and K channels) between the MBS on the one hand and the LBS or UBS on the other is essential to assuring the required interference protection. . . . [S]eparation between MBS operations and two-way services is required in order to protect reception of MBS video signals from beat interference that would occur were two-way services permitted within 6 MHz of a closely-spaced MBS receive site.”).

transition basis, and the obvious potential for interference from new or modified fixed transmitters in the absence of D/U analyses, the new rules, astonishingly, appear to permit such uses. CTN and NIA, therefore, ask the Commission either to clarify its intention not to permit two-way use of the 2.5 GHz band prior to transition, or put all licensees on notice that if they elect to deploy two-way facilities on a pre-transition basis, they do so at their own risk. CTN and NIA also seek changes to the rules to require a streamlined D/U analysis (discussed below) in connection with deployment of new or modified fixed transmitters throughout the 2.5 GHz band pre-transition, and in the MBS post-transition.

With respect to two-way operations prior to transition, if the Commission chooses to permit such operations notwithstanding the risk of interference, it must ensure that any licensee (or excess capacity lessee) that elects to deploy such facilities is required to promptly address and resolve any actual instances of interference which occur. Specifically, CTN and NIA propose the following process for pre-transition interference resolution in situations where a party deploys two-way facilities on a pre-transition basis.

The Commission should:

- (i) Require that prior to the commencement of two-way operations, the licensee or excess capacity lessee (“Modifying Party”) notify all other potentially affected EBS and BRS licensees (each an “Affected Party”) of the operating parameters of two-way facilities.
- (ii) Require that such notification include a telephone number and e-mail address where a representative of the Modifying Party can be reached within 24 hours in the event that harmful interference is believed to be caused to the facilities of an Affected Party.

²⁷ *Report and Order* at ¶ 6.

(iii) Require that upon being contacted by an Affected Party, the Modifying Party consult with the Affected Party and make good faith efforts to identify and eliminate the source of the interference.

(iv) Require that absent the consent of the Affected Party, the Modifying Party must shut down its two-way facilities if it cannot eliminate interference within five (5) days of being contacted by the Affected Party.

CTN and NIA strongly prefer that two-way systems not be deployed on a pre-transition basis at all. However, if they are deployed, adoption of the procedures set forth above will at least provide an incentive to any party planning to deploy such facilities to coordinate with incumbent EBS licensees so as to ensure that interference concerns are addressed in advance. It may also provide an incentive for commercial operators to implement early transitions, particularly if the Commission permits transitions based on geographic areas smaller than MEAs, as urged by CTN, NIA, and the WCA.

With respect to the deployment of new or modified fixed transmitters pre-transition throughout the band and post-transition in the MBS, CTN and NIA urge that the Commission add a D/U ratio interference protection requirement, utilizing the same standards contained in Section 27.1233(b)(3) of the Commission's rules. This can be accomplished in a manner that does not require prior applications to the FCC or other significant Commission intervention, if the Commission:

(i) Requires a mandatory *exchange of transmission system and receive site information* by potentially affected licensees upon request of any other licensee intending to make changes in its fixed transmission facilities.

(ii) Requires *notification* to other potentially affected licensees and to the Commission prior to the commencement of operations on modified or new facilities (to ensure that other licensees in the market know the operating parameters of modified or new facilities).

(iii) Requires D/U ratios be analyzed and *D/U standards* be met on an “honor system” basis. There would be no review of applications by the Commission or other licensees. If a licensee experiences interference, the licensee would independently track down the offending transmitter and determine if D/U ratios are being met. If D/U ratios are not being met, the offending licensee would be required to terminate its new or modified operations until it corrects the problem.

The standards proposed above are not unduly burdensome. Under the old ITFS rules, an unlimited number of hypothetical receive sites within a licensee’s PSA were entitled to interference protection.²⁸ Under those rules, it was possible in almost all cases, to identify one or more hypothetical receive sites that failed to receive adequate interference protection from a newly proposed facility, thus giving rise to potential “greenmail” situations. However, under the interference protection criteria proposed by CTN and NIA in this Petition for Reconsideration, only *actual* receive sites within a GSA would be eligible for D/U protection. A requirement to protect only a finite number of actual EBS receive sites, based on each site’s actual receiving antenna, and with the relaxed D/U ratios is reasonable and not unduly burdensome on licensees.²⁹

²⁸ See 47 C.F.R. § 74.903.

²⁹ The Coalition proposed a relaxation of the adjacent-channel D/U ratio requirement from 0 dB to -10 dB, and allowed even more negative D/U ratios if a receiver could be shown to tolerate more negative D/U ratios. See Comments of WCA, NIA and CTN filed on September 8, 2003 at 72-73. However, pursuant to new Section 72.1233(b)(3)(ii), adjacent-channel D/U ratios of less than 0 dB are permissible only if the receiver at an EBS receive site can tolerate such negative adjacent-channel D/U ratios. Virtually all existing TV receivers are capable of tolerating adjacent-channel D/U ratios of at least -10 dB. Therefore, CTN and NIA urge that the adjacent-channel D/U ratio be relaxed outright to -10 dB. The receiver tolerance test should only come into play where the adjacent-channel D/U ratio would be worse (*i.e.*, more negative) than -10 dB.

V. Additional Safe Harbors

The new rules contain just two “safe harbors” defining in advance what might be considered reasonable in a proponent’s transition plan.³⁰ The Commission adopted only two of the nine safe harbors proposed by the Coalition on the grounds that the two adopted were the only safe harbors of “general applicability.”

CTN and NIA believe that the Commission’s analysis of whether to adopt certain safe harbors was unduly simplistic. While it is true that certain of the safe harbors proposed by the Coalition would not apply to every licensee, at least two of the safe harbors rejected by the Commission cover situations that will occur over-and-over again and involve matters that are ripe for dispute. The safe harbors were proposed because they represented what both educators and commercial operators thought was fair during the development of the Coalition Proposal. CTN and NIA therefore ask that the Commission adopt the following two additional safe harbors, to assist EBS licensees and proponents alike in accommodating common circumstances without disputes. These safe harbors are virtually identical to those included in the Coalition Proposal.³¹

Safe Harbor #3. Where an EBS licensee is entitled to two or more video programming or data transmission tracks in the MBS, absent agreement to the contrary, the Proponent has two options:

- (i) First, the Transition Plan can call for migration of one of those programming tracks to the EBS licensee’s default channel in the MBS (*e.g.* channel A4 in the case of the A Group licensee) and provide the EBS licensee an additional 6 MHz channel in the MBS for each additional EBS video programming or data transmission track. If the Proponent chooses

³⁰ See *Report and Order* at ¶¶ 90-92 and new Section 27.1232(e). Also, some elements of safe harbors #6 and #7, which were proposed by the Coalition, were incorporated into Sections 27.1232(b) of the new rules.

³¹ See Coalition Proposal, Appendix B at 23-25.

this option, it must assure that the additional MBS channels can operate with transmission parameters substantially similar those of the channel(s) on which the EBS video or data tracks were transmitted pre-transition (*see Safe Harbor #2*). In exchange, the contributor of each additional MBS channel will be entitled to one of the recipient EBS licensee's channels in the LBS or UBS (along with the associated Guard Band channel) for each additional MBS channel provided. The additional MBS channels can be ones that would have been licensed to the Proponent under the default system, or can be made available by way of channel swapping arrangements with other licensees in the market orchestrated by the Proponent. The channels the contributor receives in exchange for its MBS channel shall be located at one of the ends of the recipient EBS licensee's default allocation, rather than in the middle.

(ii) Second, in the alternative, at the sole option of the Proponent, the Transition Plan can call for the installation of digital compression technology to transmit and receive multiple tracks on the licensee's default MBS channel(s). In any case where the licensee's existing tracks are provided on only one channel using digital compression, however, the Proponent will be required to install digital compression technology on a single channel.

Safe Harbor #4. In some cases, multiple licensees currently share a channel group, with each licensed individually on one or more channels. If the licensees are either BRS licensees or EBS licensees who do not choose to migrate programming to the MBS and those licensees were unable to reach agreement on the post-transition licensing of channels, the Transition Plan can safely provide for the licensing of the spectrum in each segment on a *pro rata* basis (with channel(s) in each segment being disaggregated when and if necessary to provide each licensee with its *pro rata* share of the spectrum in each segment). If the multiple licensees are EBS licensees and each is entitled to video programming or data transmission tracks, the Proponent has two choices absent agreement otherwise:

(i) First, it can secure for each licensee its own 6 MHz MBS channel in exchange for non-MBS channels assigned to the group. Following the channel swap(s) necessary to secure those additional MBS channels, the

Transition Plan can provide for the licensing of the remaining channels in the LBS, UBS, and Guard Bands on a *pro rata* basis (with channel(s) in each segment being disaggregated when and if necessary to provide each with its *pro rata* share of the spectrum in each segment).

(ii) Second, the Transition Plan can call for *pro rata* segmentation of the default MBS channel for the group, provided that the Proponent commits to provide each of the licensees with the technology necessary for its EBS video programming or data transmissions to be digitized, transmitted and received utilizing the provided bandwidth. The non-MBS channels would be divided among the sharing licensees on a *pro rata* basis (with channel(s) in each segment being disaggregated when and if necessary to provide each with its *pro rata* share of the spectrum in each segment).

NOTE: If only one of the sharing EBS licensees elects to migrate video programming or data transmissions to the MBS, the default MBS channel assigned to that channel group shall be licensed to that licensee. The remaining spectrum assigned to the group will be allocated among the licensees on a *pro rata* basis, with the 6 MHz in the MBS counting against that licensee's portion. To the extent necessary, the non-MBS spectrum can be disaggregated when and if necessary to provide each with its *pro rata* share of the spectrum in each segment. If the one licensee that elects to migrate EBS video programming transmits multiple EBS video programming tracks, the options identified in Safe Harbor #3 are available to the Proponent to satisfy its migration obligations. If the proponent chooses to effectuate a channel swap to provide more than one channel in the MBS, the remaining channels assigned to the group (after considering that one or more LBS/UBS channels and associated Transition Band channels will have been swapped away to provide the additional MBS channel) can be allocated among the licensees on a *pro rata* basis (with channel(s) in each segment being disaggregated when and if necessary to provide each with its *pro rata* share of the spectrum in each segment).

VI. License Forfeitures and Reversions to BTA Licensees

In paragraph 54 of the *Report and Order*, the text suggests that when an existing license is forfeited, the right to operate in that area on the frequencies represented by the forfeited license “reverts” to the BTA licensee. Given that BTA authorizations currently are only for BRS channels, CTN and NIA ask that the Commission clarify that this would only be true with respect to forfeited licenses on channel groups that are presently allocated to the BRS. Significantly, Section 27.1206(b) of the new rules correctly

provides that only the forfeiture of BRS licenses would result in a reversion to the BTA licensee.³²

The Commission has never interpreted a BTA license as encompassing channel rights in EBS spectrum, and such a result would be directly contrary to the Commission's decision in the *Report and Order* to retain EBS eligibility and content restrictions.³³ If an EBS license is forfeited, that spectrum becomes available for application and auction by educational entities otherwise eligible to be licensed on EBS spectrum.³⁴

VII. Secondary Markets and Substantive EBS Requirements

In the *Report and Order*, the Commission agreed with the CTN's and NIA's suggestion that, in applying the secondary markets leasing regime to EBS licensees, the "substantive use requirements that have historically applied to ITFS must remain in effect in the spectrum leasing context."³⁵ The *Report and Order* goes on to list six such requirements, precisely as they were presented to the Commission by CTN and NIA.³⁶

³² If the Commission adopts the suggestion of CTN and NIA in their comments filed today in response to the *FNPRM* that the Commission license all remaining EBS "white space" for each EBS channel group on the basis of BTAs, Section 27.1206(b) should be modified to state that if the license for an incumbent EBS station is canceled or is forfeited, the GSA of the incumbent station shall dissolve and the right to operate in that area automatically reverts to the EBS BTA licensee for the corresponding EBS channels. This issue also is addressed in Section 27.1209(c), which refers generally to "incumbent authorizations" reverting to the BTA licensee. Section 27.1209(c) duplicates Section 27.1206(b) and is probably unnecessary if the Commission adopts appropriate changes to Section 27.1206(b), as noted above.

³³ *Report and Order* at ¶ 152.

³⁴ If the Commission adopts the suggestion of CTN and NIA in their comments filed today in response to the *FNPRM* that the Commission license all remaining EBS "white space" for each EBS channel group on the basis of BTAs, then the right to operate on any forfeited EBS frequencies in any particular channel group in any particular BTA would revert to the EBS "BTA licensee" for such group.

³⁵ *Report and Order* at ¶ 181.

³⁶ See Joint Comments of NIA and CTN in the *Matter of Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets*, WT Docket No. 00-230, filed December 5, 2003.

However, there are two problems with the Commission's treatment of this matter that need to be addressed.

First, Section 1.9047 of the new rules, which apparently implements the determinations set forth in paragraph 181 of the *Report and Order*, only refers back to the substantive requirements set forth in Section 27.1214 of the rules governing EBS leasing arrangements. However, Section 27.1214 does not correctly incorporate all of the pertinent portions of the Commission's prior policies governing ITFS leasing – particularly the 15 year limitation on lease terms and the provision requiring leases to provide for the acquisition of equipment at the end of the lease.³⁷

Second, by including the fourth and fifth requirements listed in paragraph 181 of the *Report and Order*, the Commission did not take into account CTN's and NIA's Joint Reply Comments in the secondary markets proceeding, in which they stated that, upon further consideration, CTN and NIA realize that requirements (iv) and (v) may not be appropriate under the *de facto* transfer model.³⁸ Under that model, an EBS licensee may

³⁷ With respect to the 15-year lease limitation, the most recent pronouncement on the issue was in 1998, when the Commission determined that lease terms of up to 15 years were appropriate (raising the limit from the previous 10 year limit). See *Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and Instructional Television Fixed Service Licensees to Engage in Two-Way Transmissions*, Report and Order, 13 FCC Rcd 19112, 19183 (1998) (“*Two-Way Order*”). To avoid doubt on this issue, the 15-year limitation on EBS lease terms should be incorporated into Section 27.1214. With respect to equipment transfer requirements, new Section 27.1214(c) does not fully reflect current policy, in that it appears to be limited to lease terminations “as a result of action by the spectrum lessee” and it does not articulate distinctions between dedicated and common equipment. See *Two Way Order* at 19178. With respect to the 5% educational reservation, Section 27.1214(b)(1) states that an EBS licensee must “reserve a minimum of 5% of the capacity of its channels for *instructional* purposes” (emphasis added). However, in recognizing that EBS stations in the two-way data environment may not always be used for in-classroom instruction, the Commission has articulated a more general requirement that EBS stations be used for purposes that further the educational mission of accredited schools. This more general requirement is properly stated in Section 27.1203(b) of the new rules. Therefore, in Section 27.1214(b)(1), rather than stating that the 5% reservation must be for “instructional” purposes, it should state that the reservation must be for “educational uses consistent with Section 27.1203(b) and (c) of the rules.”

³⁸ Joint Reply Comments of NIA and CTN in the *Matter of Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets*, WT Docket No. 00-230, filed January 5, 2004 at 3.

not want to retain responsibility for compliance with rules regarding station construction and operation, as that responsibility would shift to the lessee. Also, an EBS licensee would not necessarily want to have all station modification applications submitted through the EBS licensee, particularly for leased capacity that, under the new band plan, would be used for low power, cellularized two-way services. For these reasons, CTN and NIA urge the Commission to remove the references to those two requirements in the secondary market rules. These requirements do not appear in Section 27.1214. Therefore, the Commission only need clarify that its discussion in paragraph 181 should also not have referenced requirements (v) and (vi).

VIII. Miscellaneous Issues and Corrections

CTN and NIA urge the Commission to make the following five additional corrections to the new rules:

First, in Section 27.5(i), the footnote to paragraph (i)(2) states that “the 125 kHz channels previously associated with these channels have been reallocated to Channel *H3* in the upper band segment.” In fact, the old response channels have been reallocated to Channel *G3*. To avoid confusion, that correction should be made.

Second, in Section 27.5(i)(3), despite the Coalition’s request that the Four Channel Rule be substantially modified or eliminated,³⁹ the Commission carries forward

³⁹ See Coalition Proposal at 55. The Coalition noted that, in many markets, the Commission routinely granted waivers of the rule so that educators choosing to work together could apply for, construct and operate ITFS stations to serve varied educational needs under the direction and control of a single licensee. The licensee was often a governmental entity (such as the state public television commission or a state university system) which would hold the license for and operate multiple stations to serve the needs of K-12, secondary, community college, university and adult learners. In other cases, the FCC granted waivers to particular licensees who demonstrated that they needed more than four channels in the market to serve their own transmission needs. Furthermore, licensees commonly applied for and were granted one or two channels from more than one group in a market, often because they originally used channels from one group as a studio to transmitter link to feed programming to channels from a second group. Given the current state of EBS licensing patterns, and the expectation that existing EBS licensees will often seek in

and even tightens the old rule provisions limiting an EBS licensee to only four channels, one of which would now have to be in the MBS and three of which would be in the LBS or UBS. This provision is contrary to the Commission's intent to provide EBS licensees with additional flexibility of use.⁴⁰ It would also undermine transition planning which may in some instances require licensees to swap MBS for UBS/LBS channels and vice-versa in order to accommodate needs for more or less video capacity. The result of channel swapping alone might result in a four-channel licensee having more than one MBS or more than three LBS or UBS channels. CTN and NIA urge the Commission to delete Section 27.5(i)(3) in its entirety.

Third, Section 27.1201(c) contains an elaborate but now irrelevant set of provisions governing the option for certain "wireless cable entities" to obtain authorizations on up to eight EBS channels in certain circumstances. While CTN and NIA have no issue with grandfathering those relatively few wireless cable operators that might have obtained EBS channels pursuant to this provision in the past, it is clear that no new EBS channels will be available for future commercial video use in this manner. The entire section should be struck.

Finally, in Section 27.1221, there appears to be a typographical error. The section sets out certain interference standards and, in the first line, refers to interference protection "afforded to *BRS* on a station by station basis" (emphasis added). CTN and

upcoming white area auctions to expand geographically the service areas of their existing channels by acquiring new licenses on those same channels, the continued existence of the Four Channel Rule would only frustrate legitimate expectations and/or require the Commission to review and act on numerous waiver requests.

⁴⁰ *Report and Order* at ¶ 2.

NIA believe that the section is equally applicable to EBS stations, so that the reference should be to “BRS *and* EBS.”

Respectfully submitted,

CATHOLIC TELEVISION NETWORK

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January 10, 2005

CERTIFICATE OF SERVICE

I, Shelia Wright, hereby certify that copies of the foregoing Joint Comments of the Catholic Television Network and the National ITFS Association have been served by Hand or by First Class Mail this 10th day of January, 2005, on the following:

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