

**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
	)	
Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets	)	WT Docket No. 00-230
	)	

**SPRINT PETITION FOR RECONSIDERATION**

Sprint Corporation (“Sprint”), pursuant to Section 1.429(d) of the Federal Communications Commission’s (“FCC” or “Commission”) Rules, hereby petitions for partial reconsideration of the *BRS Order*.<sup>1</sup>

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<sup>1</sup> *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 and Further Notice of Proposed Rulemaking, 19 FCC Rcd 14165 (2004) (“*BRS Order*” and “*FNPRM*”).

## I. INTRODUCTION

As a licensee and lessee Broadband Radio Service (“BRS”) and Educational Broadband Service (“EBS”) spectrum, Sprint has a keen interest in this proceeding and is supportive of the Commission’s efforts to revamp the BRS/EBS spectrum and service rules. The *BRS R&O* represents a major and positive step towards making BRS and EBS spectrum viable for advanced broadband services that will benefit the American public. Certain aspects of the rules adopted under the *BRS R&O*, however, should be revised to make possible a speedier and more efficient transition to the new BRS/EBS bandplan.

## II. DISCUSSION

### A. Transitions To The New BRS/EBS Bandplan Should Be Undertaken On A BTA Basis.

The Coalition Proposal established a transition process under which proponents transitioned themselves and any surrounding licensees, as required for interference protection purposes.<sup>2</sup> As Sprint explained in its comments and reply comments leading up to the BRS R&O, the Coalition’s market-by-market transition plan offered a manageable, efficient and expeditious method of migrating to the new BRS/EBS bandplan.<sup>3</sup> The Commission instead adopted a transition plan that requires transitioning on a Major Economic Area (“MEA”) basis.<sup>4</sup>

The Commission indicates that transitioning on an MEA basis will “enable” large areas of the country to be transitioned at once and will ensure that the BRS/EBS band “is transitioned

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<sup>2</sup> See “A Proposal For Revising The MDS and ITFS Regulatory Regime,” Wireless Communications Association International, National ITFS Association and Catholic Television Network (the “Coalition”), RM-10586 (filed Oct. 7, 2002) (“*Initial Coalition Proposal*”), App B.

<sup>3</sup> See Comments of Sprint Corporation, WT Docket No. 03-66 (filed Sept. 8, 2003) at 15-16; Reply Comments of Sprint Corporation, WT Docket No. 03-66 (filed Oct. 23, 2003) at 31.

<sup>4</sup> See *BRS R&O* at ¶¶ 33-36.

quickly.”<sup>5</sup> Although Sprint appreciates the deceptively simple attractiveness of flash-cutting transitions throughout the country in large geographic sections, attempting such transitions on a Basic Trading area (“BTA”) basis would be far more manageable and practical than the MEA basis the Commission adopted and, importantly, more likely to result in quick transitions. BRS spectrum has been geographically licensed as BTAs for almost a decade. FCC licensing databases are set up to process BRS license information based upon BTAs, and operators and licensees have developed interference and other interoperating relationships along BTA lines. It will, therefore, be much easier as a practical matter for proponents to transition these areas on a BTA basis. Transitioning the BRS/EBS band on a BTA basis rather than an MEA basis also likely would allow rural areas to be transitioned in a faster and more efficient manner, because the smaller geographic scope of a BTA generally results in significantly less costs and administrative hurdles for transitioning than those associated with transitioning an entire MEA.

In contrast, transitioning on an MEA basis would require that proponents identify and map out transition requirements for unfamiliar territory and, in many cases, bear costs and other transition burdens that may offer little return relative to the proponent’s fractional operations within the MEA. Moreover, approximately one quarter of the BRS BTAs overlap two or more MEAs – meaning such BTA authorization holders could be faced with transitioning two entirely unrelated territories simply to transition its own BTA. Given that Initiation Plans *must* be submitted by a date certain (which, as detailed below, Sprint requests be changed to thirty (30) months after the effective date of any order on reconsideration of the *BRS R&O*), and the existing rational relationship between the BRS spectrum and BTA licensing, there is no reason to be-

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<sup>5</sup> *Id.*

lieve that requiring BRS/EBS transitioning on a BTA basis will take any longer than requiring BRS/EBS transitioning on an MEA basis – and every reason to believe that it will, in fact, occur much faster.

In transitioning BTAs, the BTA authorization holder should transition its stations as well as all stations associated with Geographic Service Areas (“GSAs”) that have centroids within the BTA. Further, the proponent should be permitted to transition any station(s) outside the BTA it is transitioning, as the proponent deems necessary (i) to avoid interference within the BTA under transition and (ii) to assist the proponent in meeting its interference protection obligations set forth in Section 27.1233(b)(3). Again, given that BTAs already serve as the standard for licensing BRS spectrum, transitioning the BRS/EBS band along these proposed lines should substantially streamline the transition process.

**B. The Commission Should Provide A Self-Transition Option.**

Although the transition process adopted in the *BRS R&O* does not require that transitions occur by any specific date, the *FNPRM* auction proposals would require licensees that are not transitioned under an Initiation Plan submitted by a date certain to eventually lose their license(s).<sup>6</sup> It seems likely, however, that there will be instances in which a licensee will be unable to take on the burden of transitioning the entire geographic market, but otherwise desire to retain its license. Rural markets could particularly be adversely affected by such a rule. Accordingly, as Sprint outlined in its comments responding to the *FNPRM*, any BRS or EBS licensee in a market for which no Initiation Plan has been filed by the applicable deadline should be provided the option of self-transitioning itself within sixty (60) days after such deadline.<sup>7</sup> Licensees

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<sup>6</sup> See *FNPRM* at ¶ 269.

<sup>7</sup> See Comments of Sprint Corporation, WT Docket No. 03-66 (filed Jan. 10, 2005) at 5.

electing to self-transition should be required to notify the Commission electronically within five days of the expiration of the sixty-day self-notification period.

**C. The Transition Rules Should Remain In Effect For 30 Months Following The Effective Date Of Any Order On Reconsideration Of The *BRS R&O*.**

In the *BRS R&O* the Commission gave BRS/EBS licensees three years from the effective date of the *BRS R&O* – January 10, 2005 – to initiate transitions.<sup>8</sup> Sprint notes that petitions for reconsideration of the *BRS R&O* may significantly alter the scope of the transition process, such as changing the transition framework from MEAs to BTAs. To account for the delays and rule revisions that may result from addressing these petitions, the Commission should ensure that the new transition rules remain applicable until thirty (30) months after the effective date of any order on reconsideration of the *BRS R&O*.

**D. The Commission Should Allow Proponents To Withdraw An Initiation Plan Once Without Penalty.**

The rule prohibiting a proponent who withdraws an Initiation Plan for an area from submitting another Initiation Plan for the area should be changed.<sup>9</sup> Transitions to the new bandplan require the processing of large amounts of information, and considerable administrative coordination among operators. This process seems likely to be fairly complicated and will require significant outlays of both human and financial capital to complete. The ability of proponents to accurately identify and process all of the necessary information to transition a given market, and to estimate the corresponding costs and completion dates, is necessarily limited. The number of variable factors involved – particularly for large and dense markets – increases the likelihood that a proponent could in good faith submit an Initiation Plan based upon information obtained

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<sup>8</sup> See *BRS R&O* at ¶¶ 78 and 83.

<sup>9</sup> See *id.* at ¶ 87.

prior to that point, only to discover after such submission that its information and calculations were incorrect and, based upon such discovery, conclude that filing a Transition Plan thirty days prior to the end of the Transition Planning Period would not be the most prudent course. Given the complexities of transitioning the BRS/EBS band, and the opportunity for good faith errors in processing information, the Commission should allow a would-be proponent who files and subsequently withdraws an Initiation Plan the opportunity to submit a second Initiation Plan covering the same geographic area.

**E. The Obligation To Reimburse A Proponent's Transition Expenses Should Extend To Any BRS/EBS Licensee Or Lessee That Uses A BRS Or EBS Channel For Commercial Purposes.**

An essential element of the transition approach proposed by the Coalition is that proponents must be reimbursed for their costs of transitioning EBS spectrum on a *pro rata* basis by those who utilize such EBS spectrum for commercial purposes. The Commission appears to support that approach, acknowledging that it would be difficult for EBS licensees to obtain funding to transition their own services, and that EBS sites are only required to be replaced by proponents if, among other things, the site is actually used to receive EBS programming.<sup>10</sup> The reimbursement rule adopted by the Commission provides that: "BRS licensees in the LBS or UBS must reimburse the proponent(s) a pro rata share of the cost of transitioning the facilities they use to provide commercial service, either directly or through a lease agreement with an EBS licensee." Although the rule appears to capture most cases where EBS spectrum is used for commercial purposes, it does not appear to capture (and thus subject to reimbursement) all cases. For example, the rule does not appear to cover cases in which the EBS licensee uses its channels for

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<sup>10</sup> See *id.* at ¶¶ 93-94.

commercial purposes. Accordingly, the Commission should clarify that anyone who uses a licensed or leased EBS channel for commercial purposes must reimburse the proponent, on a *pro rata* basis, the proponent's costs for transitioning the facilities serving such channel.

In addition, the Commission should ensure that the rule is applied prospectively, so that proponents are reimbursed by future commercial uses of EBS spectrum that commence after the market is transitioned. To ensure that reimbursement costs are allocated in a fair manner, given the varying size of license areas, the Commission should establish a *pro rata* reimbursement formula based upon the amount of spectrum used and the applicable population served.

Finally, the Commission also should clarify its statement that “[t]he Transition Plan must include plans for relocating the EBS and BRS incumbents from spectrum that has been redesignated for MDS 1 and 2 under the rules adopted today.”<sup>11</sup> There is no basis for requiring the licensees of BRS Channels 1 and 2/2A to fund their relocation from the 2.1 GHz band to the 2.5 GHz band. Rather, as the Commission has made clear on several occasions, its relocation policy generally requires the party who benefits from the relocation to take responsibility for relocating incumbents.<sup>12</sup> In the instant case, BRS Channel 1 and 2/2A licensees are being involuntarily relocated from the 2150-2160/62 MHz band to the 2496-2502 MHz band to benefit new AWS entrants.<sup>13</sup> Accordingly, as the new entrant responsible for and benefiting from BRS licensees' in-

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<sup>11</sup> *Id.* at ¶ 88.

<sup>12</sup> See, e.g., *Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service*, Second Report and Order and Second Memorandum Opinion and Order, 15 FCC Rcd 12315, 12346 at ¶ 97 (2000); *Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless System*, Sixth Report and Order, Third Memorandum Opinion and Order, and Fifth Memorandum Opinion and Order, ET Docket 00-258 *et al.*, FCC 04-219, at ¶ 55 (rel. Sept. 22, 2004).

<sup>13</sup> See *Review of the Spectrum Sharing Plan Among Non-Geostationary Satellite Orbit Mobile Satellite Service Systems in the 1.6/2.4 GHz Bands and Amendment of Part 2 of the Commission's Rules to Allo-*

voluntarily relocation from the 2150-2162 MHz band, the costs of such relocation should be borne by the 1.7/2.1 GHz AWS auction winners.

**F. Licensees Filing Counterproposals To Reasonable Transition Plans Should Pay The Cost Differential If The Proponent Adheres To The Counterproposal.**

To prevent greenmail opportunities, the Coalition proposed that a proponent receiving a counterproposal to its Transition Plan could (i) submit its plan to dispute resolution, (ii) in the interim, transition the market according to the counterproposal, and (iii) if the dispute resolution process concluded that the proponent's Transition Plan was sound, the licensee that submitted the counterproposal basically would be required to pay the added costs of implementing its counterproposal that were over and above those that would have been incurred had the proponent implemented its own Transition Plan.<sup>14</sup> For its part, the Commission's transition rules adopted in Section 27.1232(d) permit proponents to transition markets in accordance with their Transition Plan after receiving a counterproposal to such plan (and while awaiting a reasonableness determination), but do not permit proponents to transition in accordance with the counterproposal and later obtain any incremental costs of implementing such counterproposal relative to its Transition Plan.

The Commission should revise Section 27.1232(d) so that it is consistent with the Coalition's proposed approach described above. As the rule now stands, there is no disincentive against the counterproposals that are frivolous, designed to extract greenmail, and/or intended to

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*cate Spectrum Below 3 GHz for Mobile and Fixed Service to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems, IB Docket No. 02-364 and ET Docket No. 00-258, Report and Order, Fourth Report and Order and Further Notice of Proposed Rulemaking, FCC 04-134, (rel. July 16, 2004).*

<sup>14</sup> See *Initial Coalition Proposal*, App B. at 21.

delay transitions. The Coalition's approach provided proponents with the certainty they require to transition markets in accordance with counterproposals, without fear that their costs could be artificially inflated. This protection also should be provided to entities that would be subject to a Transition Plan. Specifically, The Commission also should require proponents to reimburse the costs related to the dispute resolution process for licensees objecting to an initial Transition Plan, if such plan is found to be unreasonable.

**G. The Contents Of The Initiation Plan Should Be Modified.**

Two modifications to Section 27.1231(d), which specifies the contents of an Initiation Plan, should be adopted. First, the Commission should eliminate the requirement of subsection 27.1231(d)(3), which requires that each Initiation Plan include "a statement indicating that the engineering analysis to transition all of the BRS and EBS licensees in the MEA(s) has been completed." The term "engineering analysis" is not defined anywhere in the *BRS Order* or its accompanying rules, so it is unclear what the Commission would expect of such analysis. In any event, it seems unlikely that proponents will have enough information regarding specific operations or the facilities and interference protections required for such operations until after the proponent has sent out its Transition Plan to affected parties, since that "marks the start of the phase of the transition where the proponent and individuals negotiate over the details of the transition."<sup>15</sup> The Commission should instead ensure that the information exchange elements of the Transition Planning Period are sufficient to ensure that all affected parties are able to secure the information they require to complete the transition process.

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<sup>15</sup> *BRS R&O* at ¶ 74.

For essentially the same reasons, the Commission should eliminate the requirement of subsection 27.1231(d)(4), which requires that each Initiation Plan include a statement of “when the transition plan will be completed.” A proponent will not be able to accurately assess the time required to complete the transition process until it has fully vetted the various issues with affected parties during the Transition Planning Period. Because the Transition Plan – which is drafted by the proponent during the Transition Planning Period precisely when the interaction with affected parties occurs – already requires an approximate timeline for effectuating the transition, the Commission is assured it will receive an estimate of transition completion based upon the most reliable information.

### **III. CONCLUSION**

For the foregoing reasons, Sprint respectfully requests that the Commission adopt the recommendations set forth above.

Respectfully submitted,

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