

**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
)	
)	

REPLY COMMENTS OF DIGITAL BROADCAST CORPORATION

Digital Broadcast Corporation (“DBC”), pursuant to Section 1.415(c) of the Commission’s rules, hereby submits its Reply Comments to the *Report and Order and Further Notice of Proposed Rulemaking* (“Order”)¹ in the above-referenced proceeding. Petitioner submitted Comments on January 10, 2005 (“Comments”).

I. Meeting Substantial Service Requirements

In addition to supporting the adoption of the Part 27 substantial service requirements in its Comments, DBC supports suspending all Broadband Radio Service

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 Red 14165 (July 29, 2004). A synopsis of the Order was published in the Federal Register on December 10, 2004. 69 Fed. Reg. 72020.

(“BRS”) and Educational Broadband Service (“EBS”) licensees from having to meet such requirements until five years after the filing of a station’s post-transition notification. Any renewals that arise during the five years after filing of the post-transition notification period should be automatically granted with a condition that such stations must file an application at the end of the five year mark indicating how it has met the substantial service requirements. This will allow a sufficient period for BRS and EBS stations to deliver service to the public after enactment of the new rules and transition to their new channel allocation.

DBC advocates the position that each BRS and EBS license should be individually reviewed by the Commission to determine if such station is meeting its substantial service requirements. Whether a station is leased should be irrelevant, as to allow operators to hold on to such spectrum for future use indefinitely, particularly after the timeframe provided above, is merely a new form of warehousing spectrum. However, DBC would support the creation of specific criteria that a licensee must meet to be held for future use, such as for the licensee (and its lessee) to show how significant growth in operation of the system, of which the renewing station is a part, would deem the need for such spectrum within the two years following the station’s expiration date. If not put into effective use within such two year period, the license should be cancelled and made available to other interested entities.

DBC does not support allowing the Commission to consider past operation of a station in meeting its substantial service requirements if such operation has been permanently discontinued. This again is another means of warehousing spectrum. The only exception to such non-service should be for a licensee whose operations were concluded within one year before its renewal period due to the termination of a lease with an operator. In those situations, the licensee should be provided an additional year in which to forge a relationship with a new operator and resume operations or risk having its license terminated.

II. Auctioning of Spectrum

DBC supports the auctioning of EBS channels by individual channel groups as opposed to issuing Basic Trading Area (“BTA”) authorizations with all available EBS channels (as the BRS channels are already associated with a specific BTA). This would greatly simplify the variation in licenses in the Broadband Communications Service, as EBS licenses are currently only issued by channel group. DBC reaffirms its support that such licenses should be issued on a BTA-wide basis. Furthermore, DBC reaffirms its initial Comments that auction of any available BRS BTA authorizations or EBS spectrum be held immediately, with a second auction of any remaining available spectrum to be held after transition of the stations is complete. Like many other operators, there is spectrum that DBC has needed to use in its markets, which has laid dormant and which should be made available now that the rulemaking process has significantly progressed. In addition, DBC reverses the position it took in its Comments and now does support issuing MidBand channels separately from Lower and Upper Band Channels.

III. Regulatory Fees

WDBS supports exempting EBS licensees from regulatory fees, preferring not to subject educational institutions and non-profit organizations to such payments. All other BRS regulatory fees should be based on a MHz / pops calculation as supported by other commenters in this proceeding.

IV. Wireless Cable Exception Rule

DBC supports maintaining the wireless cable exception rule.

V. Grandfathered E and F Group EBS Stations

DBC supports the Commission’s proposal to treat grandfathered E and F group EBS stations on a secondary basis.

CONCLUSION

DBC requests that the Commission consider its Reply Comments when enacting its rules in this proceeding and thanks it for its consideration in this important matter.

DIGITAL BROADCAST CORPORATION

By /s/ Gary Nerlinger
Gary Nerlinger
COO

February 8, 2005