

**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
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CONSOLIDATED REPLY TO PETITION FOR RECONSIDERATION

C&W Enterprises, Inc. (“C&W”), pursuant to Section 1.429(g) of the Federal Communications Commission’s (“Commission”) rules, hereby submits its Consolidated Reply to certain of the Oppositions to the Petitions for Reconsideration (“Oppositions”) to the *Report and Order and Further Notice of Proposed Rulemaking* (“Order”)¹ in the above-referenced proceeding.

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. The Commission Should Make Clear that Relocation Costs for the BRS-1 and BRS-2 Channels Will be Borne by Advance Wireless Services Auction Winners

C&W shares the concerns of other petitioners that the Commission must clarify that relocation costs for the BRS-1 and BRS-2 channels will not be borne by the current licensees of these channels, and their operators, but by the Advanced Wireless Services (“AWS”) auction winners.² As stated in its initial Petition for Reconsideration in this proceeding, C&W is currently operating both a wireless cable video service and providing internet data service in the San Angelo, Texas greater metropolitan area. It has been providing internet services through its BRS-1 channel since its hub site application was granted in October, 2002, and is currently serving over 1200 customers, a number which is growing on a daily basis. C&W estimates that the cost to replace the transceivers of each current subscriber upon reallocation of its BRS-1 channel to be approximately \$750, which would total approximately \$900,000.00, a figure which will only continue to increase as C&W’s internet service has been hugely successful in this market and is being actively sought by new customers.

Accordingly, C&W has great concerns as to why the Commission has not clarified how the transitioning of these channels will occur as well as

² See Oppositions of BellSouth Corporation (“BellSouth”) at 23; BRS Rural Advocacy Group (“BRS Group”) at 15; and Choice Communications, LLC (“Choice”) at 3. See also Petitions for Reconsideration of WCAI at 16; and Sprint at 7-8.

what process will be implemented in order to seek reimbursement due to such reallocation. Such reallocation will be a considerable administrative burden for C&W in physically replacing the transceivers at each customer location. It needs reassurance that severe financial hardship will not also occur as a result of the Commission's decision to reallocate this spectrum, as imposing this great of a financial obligation on C&W would endanger its ability to continue to operate its system. Accordingly, the Commission should make clear that AWS auction winners will bear this burden, and provide a means for operators such as C&W to seek reimbursement of such a transition, before implementing a transition deadline for the remaining Broadband Communications Service channels. Furthermore, the Commission must provide replacement reallocation spectrum for those entities that do "opt-out" of the transitioning process.

II. The Commission Should Adopt the Coalition's Initial Proposal Allowing MVPD's to Opt-Out of a Transition Without Having to Seek A Waiver

C&W supports the petitioners who opposed the Commission's requirement that MVPDs must request a waiver in order to "opt-out" of a transition.³ The time, expense and uncertainty in drafting and waiting for a response to a waiver, not to mention that the outcome to such a request may be dependent on when and by whom it is processed, is burdensome as well as

³ See *Oppositions of Wireless Communications Association International, Inc. ("WCAI")* at 26-30; *Sprint Corporation ("Sprint")* at 9-11; *Nextel Communications ("Nextel")* at 20-23; *BellSouth* at 17-19; *BRS Group* at 7-9; *Choice* at 2-3; and the *National Telecommunications Cooperative Association*.

puts those businesses which are subjected to such a process in severe jeopardy of continued operation.

C&W has been operating a wireless cable video service since the early 1990s and, in addition to its internet services, currently serves 3000 cable customers in the greater San Angelo market. The wireless cable division is its most profitable division and provided the funding for the launching of its internet services. The WCAI, in its “white paper,” provided a proposal that can be implemented fairly and provide certainty for operators in this industry.⁴ Accordingly, the FCC should reverse its earlier decision to reject this proposal and seek to have an automatic “opt-out” election for MVPDs that meet the criteria cited in the white paper proposal incorporated into its rules.

III. EBS Leases Should Not Be Limited to 15 Years

C&W supports allowing EBS licensees to negotiate leases according to their own needs by following the rules and policies adopted in the *Secondary Markets* proceeding, especially the elimination of the overly restrictive requirement that EBS lease terms be limited to 15 years.⁵ C&W holds leases with all five EBS licensees in its markets and has worked hard to negotiate fair and mutually beneficial leases with such entities, as well to respond to

⁴ See “A Proposal for Revising the MDS and ITFS Regulatory Regime,” as submitted by the WCAI, the National ITFS Association and the Catholic Television Network, RM-10586 at Appendix B, pp 16-18 (filed Oct. 7, 2002).

⁵ See Oppositions of WCAI at 30-34; Sprint at 5-7; Nextel at 14-20; BellSouth at 10-12; and Luxon Wireless, Inc. (“Luxon”) at 5-6.

the needs of such entities when they arise. It is because of its actions that it has established and enjoyed long-standing relationships with these entities. Accordingly, it favors allowing EBS licensees to negotiate according to their needs and not accordingly to a formula, as such restrictions could only be viewed as arbitrary.

IV. EBS Programming Requirements Should not be Increased

For the reasons very clearly stated in the WCAI's Opposition⁶, the programming requirements as embodied in the current rules should not be increased. This is an issue that was very thoroughly deliberated by the Commission and which the industry has commented on throughout various proceedings, including this one. There has been no new information or argument provided by any petitioner that would support revisiting this issue and therefore, any request to do so should be rejected.

V. An Option to Purchase Equipment Upon Termination of an EBS Lease Should Not Be Mandated

C&W is also in agreement that the Commission should not mandate that all EBS excess capacity leases must contain a provision by which the EBS licensee may purchase the current or similar transmitting equipment at fair market value.⁷ Rather than requiring that such equipment be provided by the lessee pursuant to Commission rules, it should be left to the parties to

⁶ WCAI at 37-41; *see also* Sprint at 7-9; Nextel at 26; BellSouth at 8-9; and Luxon at 3-4.

⁷ See WCAI at 32.

negotiate what each parties' obligations will be in the event of termination of a lease.

CONCLUSION

C&W urges the Commission to amend its rules as set forth in this Consolidated Reply and according to its other pleadings submitted as part of this proceeding.

Respectfully submitted,

C&W Enterprises, Inc.

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

March 4, 2005