

**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-9178
)	
Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets)	WT Docket No. 00-230
)	

To: The Commission

**CONSOLIDATED REPLY TO OPPOSITIONS TO
PETITIONS FOR RECONSIDERATION**

The BRS Rural Advocacy Group (the "Group"), a coalition of Broadband Radio Service ("BRS") operators and licensees in rural markets, by counsel, hereby replies to certain oppositions to petitions for reconsideration filed in this proceeding.¹

¹ 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, *Report and Order and Further Notice of Proposed Rulemaking*, FCC 04-135, 19 FCC Rcd 14165 (2004). The Group filed a Petition for Partial Reconsideration on January 10, 2005 ("Group Petition") and a Consolidate Opposition to and Comments in Support of Petitions for Reconsideration on February 22, 2005 ("Group Opposition").

Discussion

From the record in this proceeding, it is clear that there is a broad consensus on how the rules should be changed to benefit the interests of BRS and EBS licensees in rural markets. The collective impact of these proposals will expedite transitions to the new band plan, provide multichannel video programming distributors (“MVPDs”) with much-needed certainty to promote investment and avoid stranding existing investments that licensees and operators have made in bringing wireless services to rural Americans.

First, the Commission should adopt Basic Trading Areas (“BTAs”) as the baseline transition area. For reasons that have already been discussed at length in this proceeding, using BTAs as the transition area will facilitate transitions in rural areas.² NY3G Partnership (“NY3G”) stands alone in supporting the Commission’s decision to utilize Major Trading Areas (“MEAs”), *but it fails to cite any new rationale to rebut the numerous petitions and other filings demonstrating that using MEAs will hinder, not help, bring about transitions nationwide.*³ NY3G simply rehashes the Commission’s pronouncements, and the record overwhelmingly shows that BTAs will be much more effective in facilitating transitions, especially in rural areas.⁴

² See Petition for Reconsideration of C&W Enterprises, Inc. at 2-3; Petition for Reconsideration of the Catholic Television Network and the National ITFS Association Petition (“CTN/NIA Petition”) at 4; Petition for Partial Reconsideration of Clearwire Corporation at 2; Petition for Reconsideration of Cheboygan-Otsego-Presque Isle Educational Service District/PACE Telecommunications Consortium at 2-3; Petition for Reconsideration of Digital Broadcast Corporation at 2-3; Petition for Reconsideration of Grand Wireless Company, Inc. – Michigan at 1; Petition for Reconsideration of Hispanic Information and Telecommunications Network at 3-4; Petition for Reconsideration of The ITFS/2.5 GHz Mobile Wireless Engineering & Development Alliance, Inc. at 3-5; Petition for Partial Reconsideration of Nextel Communications at 2-8; Petition for Partial Reconsideration of Plateau Telecommunications, Inc. at 4-10 (“Plateau Petition”); Petition for Reconsideration of SpeedNet, L.L.C. at 2-3; Sprint Petition for Reconsideration at 2-4; Petition for Reconsideration of the Wireless Communications Association International, Inc. (“WCA Petition”) at 4; Petition for Reconsideration of Wireless Direct Broadcast Systems at 2-3. See also Consolidated Opposition to Petitions for Reconsideration of BellSouth Corporation, *et al.* (“BellSouth Opposition”) at 14-15; Group Opposition at 9-12; Consolidated Opposition to Petitions for Reconsideration of Luxon Wireless Inc. at 8.

³ See Comments in Response to Petitions for Reconsideration of NY3G Partnership at 7.

⁴ See, e.g., Group Opposition at 9-12; Plateau Petition at 4-10.

Second, the Commission should adopt a self-transition period. No party in this proceeding opposes the creation of a self-transition period following the deadline for submitting Initiation Plans.⁵ As proposed, a licensee that has previously “opted out” or simply not transitioned by that date could notify the Commission that it will either: (a) self-transition to the new spectrum plan; (b) exchange all of its spectrum for bidding credits; or (c) vacate its Lower Band Segment (“LBS”) and Upper Band Segment (“UBS”) spectrum in exchange for financial assistance in migrating operations to the MBS.⁶ This last alternative would allow rural MVPDs to convert to digital service without any loss in the number of programming streams a subscriber can receive and, under a complimentary proposal urged by the Group, would ensure that the migration to digital spectrum would not need to occur unless or until a “new” licensee launches service on the channels in the incumbent’s GSA.⁷ In its complimentary proposal, the Group also advocated in its Petition that any licensee that “opted out” could continue its operations without losing its spectrum, a position that no party has opposed.⁸

Third, the Commission should adopt criteria permitting eligible licensees to “opt out” of a transition without seeking waiver. Only one party – IMWED – supported the Commission’s decision to permit licensees to “opt out” of a transition through a waiver process.⁹ The record is clear that, by adopting self-effectuating “opt-out” criteria, transition proponents and MVPDs alike would obtain certainty and avoid delays in

⁵ See, e.g., Group Opposition at 12-14 citing CTN/NIA Petition at 5-9 and WCA Petition at 34.

⁶ See Sprint Consolidated Opposition to Petitions for Reconsideration (“Sprint Opposition”) at 11.

⁷ See Group Opposition at 14.

⁸ See Group Petition at 19.

⁹ See Consolidated Opposition to Petition for Reconsideration of The ITFS/2.5 GHz Mobile Wireless Engineering & Development Alliance, Inc. at 17.

the transition process.¹⁰ With pre-established criteria that balances the interests of those operators that want to transition with those that want to maintain ongoing MVPD services to the public, there will be no need for the Commission to involve itself in a time-consuming waiver process.¹¹

Three parties opposed the Group's proposal to add a third benchmark to the "opt-out" criteria on grounds that existing high-power services would cause interference to new low-power operations.¹² The Group believes that these concerns are overstated when considered in the context of other proposals the Commission should adopt based on the record. In addition to reducing the size of the transition areas and implementing a self-transition period, the Commission should adopt the Coalition's unopposed plan, supported by the Group, that would require a proponent to pay for certain minor technical changes to an MVPD's facilities to reduce interference to low-power systems.¹³ The Group also supports the "opt-out" process described by W.A.T.C.H. TV and WCA, which encourages proponents and licensees eligible to "opt out" of a transition to discuss ways to include the

¹⁰ See BellSouth Opposition at 17-18; Group Opposition at 7-9; Comments in Support of Petitions for Reconsideration of the National Telecommunications Cooperative Association at 2-3; Consolidated Opposition to Petitions for Reconsideration of Nextel Communications ("Nextel Opposition") at 21; Sprint Opposition at 9-10.

¹¹ See Group Petition at 10-11 ("To be sure, this process would unnecessarily raise a number of questions. What efforts will a waiver applicant need to undertake to show how it tried to minimize interference? What will qualify as a sufficient explanation of why the transition rules should not apply? What will the Commission consider to be a "reasonable alternative" under Section 1.925(b)(3) of the Commission's rules? What level of interference mitigation will the Commission deem acceptable? Will a waiver applicant be required to alter its system and lose customers in order for the waiver to be justified? How long will the Commission take to issue a decision? Can the Commission ensure consistency in the application of its waiver standards? If a waiver request is dismissed or denied, how long will the MVPD have to comply with that decision? If the waiver applicant seeks reconsideration or review, will the transition proponent be required to proceed with the transition?")

¹² See Nextel Opposition at 21-23; Sprint Opposition at 10; Consolidated Opposition to Petitions for Reconsideration of the Wireless Communications Association International, Inc. at 26-30. The Group proposed that, in addition to the two "opt-out" criteria proposed in the Coalition Plan, the Commission should also permit a BRS or EBS licensee (or its affiliate) to "opt out" of a transition if: (a) its geographic service area ("GSA") covers a county defined by the Commission as a "rural area;" and (b)(i) it provides MVPD and/or broadband service to more than 15 percent of the households within the portion of any "rural area" that is within the GSA; or (ii) it is part of a system that provides MVPD service to at least 500 customers. See Group Petition at 14-18.

¹³ See Group Petition at 18-19 *citing* Coalition Proposal at Appendix B, p.18.

MVPD in the transition until the 30th day of the Transition Planning Period.¹⁴ If these proposals are adopted, it is more likely that rural MVPDs would transition their markets to the new band plan, either during the transition period or through a self-transition, leaving only a small number of licensees that would ultimately “opt out” to preserve existing service. For those few licensees that would not be eligible under either of the criteria initially proposed by the Coalition, the Group’s third “opt-out” benchmark would permit a narrow class of truly “rural” MVPDs to maintain service to the public.

Conclusion

In view of the foregoing, the BRS Rural Advocacy Group respectfully requests that the Commission adopt:

- BTAs as the baseline transition area;
- a self-transition period following the deadline for submitting Initiation Plans, which would be available for all licensees that did not previously transition and would include the right of a licensee to exchange analog spectrum for digital spectrum in the MBS; and
- self-effectuating transition “opt-out” criteria proposed by the Coalition and the Group, with a process designed to encourage negotiated agreements between licensees eligible to “opt out” and licensees that wish to transition.

Respectfully submitted,

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March 9, 2005

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¹⁴ See Petition for Reconsideration of W.A.T.C.H. TV Company at 6; WCA Petition at 26-27.

Certificate of Service

I, Kenneth Wolin, Legal Assistant at the firm of Rini Coran, PC, do certify that I have caused a copy of the foregoing Consolidated Reply to be sent this 9th day of March, 2005 via First Class United States mail, postage prepaid to the following parties:

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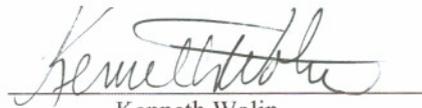
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