

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
)	
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
)	

**CONSOLIDATED REPLY TO
OPPOSITIONS TO PETITION FOR RECONSIDERATION**

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EXECUTIVE SUMMARY

The record before the Commission evidences near unanimous support for reversing the Commission's mandate that the Proponent transition all stations within a MEA. The rhetoric of the sole advocate for retaining the current rule cannot overcome the factual evidence of real situations in which real operators are being prevented from transitioning because MEAs bear no logical relationship to their service area.

The records supports WCA's proposal that the Commission require licensees to respond no later than 21 days from receipt of a pre-transition data request. The information required to respond to a request should be known to any Commission licensee, and those that do not have the information can start collecting it now so as to not delay future transitions. Further, to avoid delays in transitions, the record supports allowing the Proponent to proceed with a transition without having to migrate a non-responsive licensee's programming tracks to the MBS, without replacing a non-responsive licensee's downconverters, and without providing the requisite desired-to-undesired signal levels at a non-responsive licensee's receive sites.

The record also indicates substantial support of proposals by WCA and Nextel for clarification that the first party to file an Initiation Plan for a BTA should be deemed the Proponent. The only opposition to this proposal comes from SBC Communications, Inc. ("SBC"), which has strangely and without explanation reversed its prior support for the Proponent-driven transition system that was at the heart of the Coalition Proposal. SBC's assertion that the Proponent-driven system gives one licensee undue control over any transition ignores the limited role the Proponent actually plays. The Proponent does not dictate the channels on which other licensees will operate, does not dictate the technology that other licensees can utilize, and does not dictate how or where other licensees can construct facilities. All the Proponent does is develop and implement the plan by which the eligible EBS receive sites receive upgraded downconverters and eligible EBS programming tracks are migrated to the MBS, and the rules assure that it does not do so in a vacuum. Were the Commission to adopt SBC's position, it would create an environment in which any licensee in a market could delay, if not totally derail, a transition.

To expedite transitions and avoid disputes between a Proponent and EBS licensees, the Commission should adopt the three safe harbors advanced in the original Coalition Proposal that WCA has proposed to be added to the rules – Safe Harbors #3, #4 and #9. No party has opposed adoption of Safe Harbor #9 and, save for IMWED, no party has opposed the adoption of the other safe harbors proposed by WCA. IMWED's position regarding Safe Harbor #3 would result in some EBS licensees securing unwarranted windfalls, while its arguments opposing Safe Harbor #4 are based on antiquated notions of the capabilities of digital technology.

The record also supports adoption of WCA's proposals for deterring unreasonable Transition Plans and unnecessary counterproposals. Those that oppose WCA's proposal for deterring unnecessary counterproposals have failed to advance any alternative designed to eliminate unnecessary and time consuming disputes. Absent some mechanism to deter oppositions to reasonable Transition Plans, licensees would be free to advance counterproposals that are designed to delay transitions or increase a Proponent's costs.

Because there are valid reasons why a Proponent might withdraw an Initiation Plan, a Proponent should be permitted one withdrawal of an Initiation Plan without penalty. However,

to avoid possible abuse, once the Transition Planning Period has run its course and led to a fully-vetted Transition Plan, a Proponent should be committed to its approach and should not be permitted to withdraw without losing the right to file a second Initiation Plan.

The record supports adoption of proposals under which the entire cost incurred by a Proponent in transitioning a BTA should be reimbursed by subsequent commercial users of the LBS and UBS at such time as they commence operations, with their allocation based on the MHz-pops within the BTA that they are licensed for or that they lease. The Commission should reject Clearwire's proposal that cost-sharing reimbursement payments be due almost immediately upon completion of a given transition. Rather, consistent with the PCS microwave relocation model, payments should be due when commercial service is deployed in the LBS or the UBS.

There is substantial support in the record for providing a licensee that is not subject to an Initiation Plan one last opportunity to self-transition following the deadline for filing Initiation Plans and before the Commission cancels the license in exchange for bidding credits. Because the Proponent plays such a critical role in coordinating the migration of licensees from their current spectrum to their assignment under the new bandplan, WCA vigorously opposes any suggestion that licensees be permitted to self-transition prior to the deadline for filing Initiation Plans.

WCA proposed a well-balanced approach towards grandfathering of MVPD systems that either have substantial penetration within their authorized service areas or that utilize more than seven digitized channels to distribute video programming and thus cannot relocate to the MBS. The Commission should not expand the automatic MVPD opt-out beyond that proposed by the WCA since the non-qualifying MVPD's have other alternatives available to preserving their current operations.

The rules governing base station out-of-band emissions limits set forth in Section 27.53(1)(2) should be modified to eliminate the need for an operator to suffer actual interference before the more stringent spectral mask must be met by the interfering licensee. In addition, the Commission should modify Section 27.55(a)(4) to only allow a licensee to exceed the maximum signal strength limit at its GSA boundary with the consent of the neighboring licensee. If the Commission retains the existing rule, there is no rational basis for not requiring the licensee that exceeds the maximum signal strength to notify the victim cochannel licensee.

Lastly, the Commission should modify Section 27.1221 – the height benchmarking rule – to assure a prompt and efficient mitigation of cochannel interference with minimal Commission intervention. WCA is proposing a specific rule designed to achieve those objectives, which rule is supported by BellSouth, Sprint and Nextel.

**CONSOLIDATED REPLY TO
OPPOSITIONS TO PETITION FOR RECONSIDERATION**

The Wireless Communications Association International, Inc. (“WCA”), by its attorneys and pursuant to Section 1.429(g) of the Commission’s Rules, hereby replies to those who opposed WCA’s petition for partial reconsideration of the Commission’s *Report and Order* in this proceeding.¹

I. THE COMMISSION’S OBJECTIVES WILL BE BEST SERVED BY USING BTAS AS THE GEOGRAPHIC UNIT FOR TRANSITIONS TO THE NEW BRS/EBS BANDPLAN.

The record establishes that the Commission’s decision to require proponents to transition entire Major Economic Areas (“MEAs”) should be reversed on reconsideration. Fourteen petitions sought reconsideration of that requirement,² and an additional five parties subsequently expressed support for those petitions.³ Indeed, of all the participants in this proceeding, only NY3G Partnership

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 Band*, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 14165 (2004)[“*Report and Order*”].

² See Petition of Wireless Communications Association International, Inc. for Partial Reconsideration, WT Docket No. 03-66, at 4 (corrected version filed Jan. 18, 2005)[“WCA Petition”]; Petition of C&W Enterprises, Inc. for Reconsideration, WT Docket No. 03-66 at 2-3 (filed Jan. 10, 2005); Petition of Catholic Television Network and National ITFS Ass’n for Reconsideration, WT Docket No. 03-66, at 4 (filed Jan. 10, 2005)[“NIA/CTN Petition”]; Petition of Clearwire Corp. for Reconsideration, WT Docket No. 03-66, at 2 n.2 (filed Jan. 10, 2005); Petition of Cheboygan-Ostego-Presque Isle Educational Service District/PACE Telecommunications Consortium for Reconsideration, WT Docket No. 03-66, at 2-3 (filed Jan. 10, 2005); Petition of Digital Broadcast Corporation for Reconsideration, WT Docket No. 03-66 at 2-3 (filed Jan. 10, 2005); Petition of Grand Wireless Company for Reconsideration, WT Docket No. 03-66, at 1 (filed Jan. 10, 2005); Petition of Hispanic Information & Telecommunications Network for Reconsideration, WT Docket No. 03-66, at 3-4 (filed Jan. 10, 2005); Petition of ITFS/2.5 GHz Mobile Wireless Engineering & Development Alliance for Reconsideration, WT Docket No. 03-66, at 3-5 (filed Jan. 10, 2005); Petition of Nextel Communications for Reconsideration, WT Docket No. 03-66, at 2-8 (filed Jan. 10, 2005)[“Nextel Petition”]; Petition of Plateau Telecommunications for Partial Reconsideration, WT Docket No. 03-66, at 4-10 (filed Jan. 10, 2005)[“Plateau Petition”]; Petition of SpeedNet, L.L.C. for Reconsideration, WT Docket No. 03-66 at 2-3 (filed Jan. 10, 2005); Petition of Sprint Corporation for Reconsideration, WT Docket No. 03-66, at 2-4 (filed Jan. 10, 2005)[“Sprint Petition”]; Petition of Wireless Direct Broadcast System, WT Docket No. 03-66, at 2-3 (filed Jan. 10, 2005).

³ See Consolidated Opposition of Luxon Wireless Inc. to Petitions for Reconsideration, WT Docket No. 03-66, at 8 (filed Feb. 22, 2005)[“Luxon Opposition”]; Opposition and Comments of Choice Communications, LLC, WT Docket No. 03-66, at 2 n.3 (filed Feb. 22, 2005); Consolidated Opposition and Comments of The BRS Rural Advocacy Group in Support of Petitions For Reconsideration, WT Docket No. 03-66, at 9-12 (filed Feb. 22, 2005)[“BRS Rural Advocacy Group Opposition”]; Reply

(“NY3G”) supports use of MEAs.⁴ Yet, the NY3G filing does not provide any factual support for retention of the MEA requirement. Although NY3G baldly asserts that the use of MEAs will result in “quicker” transitions, its naked rhetoric stands in stark contrast to the evidence in the record – evidence of real situations in which real operators have demonstrated that the size of their MEAs will deter transitions to the new bandplan.⁵ The record is clear – transitions should be organized around Basic Trading Areas (“BTAs”).

II. THE COMMISSION SHOULD PREVENT DELAYS IN RESPONDING TO PRE-TRANSITION DATA REQUESTS.

The record establishes substantial support for requiring licensees to respond to Section 27.1231(f) pre-transition data requests no later than 21 days from receipt and for allowing the Proponent to proceed with a transition without having to migrate a non-responsive licensee’s programming tracks to the Middle Band Segment (“MBS”), without replacing a non-responsive licensee’s downconverters, and without providing the requisite desired-to-undesired signal levels at a non-responsive licensee’s receive sites.⁶ While the ITFS/2.5 GHz Mobile Wireless Engineering & Development Alliance (“IMWED”) and Hispanic Information & Telecommunications Network (“HITN”) oppose these proposals, their positions are contrary to the Commission’s objective in expediting transitions.

Comments of the George Mason University Instructional Foundation in Partial Support of Joint Comments and Petition for Reconsideration of Catholic Television Network and National ITFS Association, WT Docket No. 03-66, at 2-3 (filed Feb. 8, 2005)[“GMUIF Reply Comments”]; Response of Illinois Institute of Technology to Petitions for Reconsideration, WT Docket No. 03-66, at 3-6 (filed Feb. 22, 2005)[“IIT Opposition”].

⁴ See Comments of NY3G Partnership in Response to Petitions for Reconsideration, WT Docket No. 03-66, at 7-8 (filed Feb. 22, 2005)[“NY3G Opposition”].

⁵ See WCA Petition at 9-11; Plateau Petition at 5-6; BRS Rural Advocacy Group Opposition at 10-12; IIT Opposition at 4-5; Luxon Opposition at 8.

⁶ See WCA Petition at 18; Consolidated Opposition of Wireless Communications Ass’n Int’l, Inc. to Petitions for Reconsideration, WT Docket No. 03-66 at 3 n.5 (filed Feb. 22, 2005)[“WCA Opposition”]; Nextel Petition at 9-10; Opposition of Clearwire Corp. to Petitions for Reconsideration, WT Docket No. 03-66, at 11 (filed Feb. 22, 2005)[“Clearwire Opposition”]; Consolidated Opposition of BellSouth *et al.* to Petitions for Reconsideration, WT Docket No. 03-66, at 20 (filed Feb. 22, 2005)[“BellSouth Opposition”].

The Commission should reject HITN’s claim that Educational Broadband Service (“EBS”) licensees need 45 days to respond to an initial pre-transition data request and that the Proponent should be required to send a second notice by certified mail, return receipt requested to any non-responsive licensee, who would then have an additional 15 days to respond.⁷ HITN’s argument ignores that a pre-transition data request merely requires the EBS licensee to provide certain fundamental information regarding its receive sites, its program tracks eligible for migration and, if the petitions for reconsideration of WCA and Nextel Communications (“Nextel”) are granted, its transmission facilities and its contact representatives.⁸ *All of this information should be known by any Commission licensee and certainly can be collected by EBS licensees, starting now, long before pre-transition data requests are served.* It should take a responsible licensee that has done its homework just minutes, not weeks, to respond to a pre-transition data request.⁹

IMWED’s sole argument against WCA’s approach is that “[t]here has been established no pattern of problems” regarding non-responsive licensees.¹⁰ Since, to the best of WCA’s knowledge, no pre-transition data requests have been served, that is not surprising. However, the Commission need not wait for a problem to arise before taking prophylactic action. A Proponent needs responses to pre-transition data requests to prepare an Initiation Plan, and WCA’s proposals avoid delays in transitions.

⁷ See Consolidated Comments of HITN Regarding Broadband Services Order Petitions for Reconsideration, WT Docket No. 03-66, at 3-4 (filed Feb. 22, 2005)[“HITN Opposition”].

⁸ See 47 C.F.R. §27.1231(f); WCA Petition at 19-20; Nextel Petition at 10.

⁹ Moreover, since WCA has proposed that the deadline for the filing of a response be established by the date of the licensee’s receipt of a pre-transition data request, in the case of a dispute the burden will be on the Proponent to establish that the request was delivered to the licensee’s contact person specified in the Universal Licensing System. Thus, the Proponent has every incentive to assure that the licensee receives the pre-transition data request, and the licensee bears no risk if it is not delivered. As such, there is no need for the Commission to mandate the service of a second notice by certified mail, return receipt requested. This imposes an unnecessary burden on Proponents and will only delay transitions.

¹⁰ See Consolidated Opposition of the ITFS/2.5 GHz Mobile Wireless Engineering & Development Alliance, Inc. to Petitions for Reconsideration, WT Docket No. 03-66, at 8 (filed Feb. 22, 2005)[“IMWED Opposition”].

III. THE FIRST TO FILE AN INITIATION PLAN FOR A BTA SHOULD BE THE PROPONENT.

In its petition for reconsideration, Nextel sought confirmation that for a given area, the first eligible entity to submit an Initiation Plan would be deemed the Proponent.¹¹ That proposal was philosophically consistent with the Coalition Proposal,¹² and drew support from WCA and Clearwire Corporation (“Clearwire”).¹³ Indeed, only SBC Communications, Inc. (“SBC”) takes issue with this approach. SBC’s current posture represents a strange, unexplained departure from the position it espoused in response to the *Notice of Proposed Rulemaking*,¹⁴ and is based on the incorrect contention that unless other licensees also are permitted to become proponents, this approach “give[s] one licensee the ability to essentially dictate the terms of any transition and do not assure that the legitimate interests of all the licensees affected by the transition plan are considered.”¹⁵

What SBC fails to appreciate is how limited a role the Proponent actually plays. The Proponent does not dictate the channels on which other licensees will operate, does not dictate the technology that other licensees can utilize, and does not dictate how or where other licensees can construct facilities. All the Proponent does is develop and implement the plan by which the eligible EBS receive sites receive upgraded downconverters and eligible EBS programming tracks are

¹¹ See Nextel Petition at 13.

¹² See “A Proposal For Revising The MDS And ITFS Regulatory Regime,” Wireless Communications Ass’n Int’l, Nat’l ITFS Ass’n and Catholic Television Network, RM-10586 (filed Oct. 7, 2002)[“Coalition Proposal”]. Under the Coalition Proposal, the Proponent was the first party to submit a Transition Notice with respect to a given area. See Coalition Proposal, App. B. at 16. The Coalition Proposal contemplated that this Transition Notice would have been the first formal filing with the Commission, while the Initiation Plan is the first formal filing under the rules adopted by the *Report and Order*.

¹³ See WCA Opposition at 2; Clearwire Opposition at 10-11. Of course, if the Proponent so chooses, it should be permitted to add others as Co-Proponents. The rights and obligations of the Co-Proponents as amongst themselves should be a matter of private agreement, as there are a wide variety of circumstances under which Co-Proponents could be added, and no Commission “one size fits all” rule is likely to accommodate the needs and interests of the parties to all such situations.

¹⁴ *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, 18 FCC Rcd 6722 (2003)[“NPRM”].

¹⁵ Opposition of SBC Communications to Petitions for Reconsideration, WT Docket No. 03-66, at 9 (filed Feb. 22, 2005)[“SBC Opposition”].

migrated to the MBS. In other words, the Proponent’s actions have no impact on the ability of a competitor to utilize the 2.5 GHz band for the provision of commercial services.

Although ignored by SBC, the current rules assure that the Proponent does not undertake its role in a vacuum. For example, Section 27.1232(a) establishes a 90-day Transition Planning Period that commences once the Proponent files its Initiation Plan, a period that was specifically designed by WCA, National ITFS Association (“NIA”) and Catholic Television Network (“CTN”) to afford the Proponent and the licensees implicated by a given transition an opportunity to discuss their mutual interests.¹⁶ A Proponent is required to circulate its Transition Plan to all impacted licensees before it becomes effective and, if the Proponent submits a Transition Plan that is not reasonable, Section 27.1232(c) empowers any adversely affected licensee to submit a counterproposal that, if not accepted by the Proponent, will be referred to dispute resolution. In other words, the rules provide every licensee with significant input into the transition of its BTA.

If the transition process is not structured properly, any one of the many licensees participating in a given transition, whether acting with good intent or bad, could derail or substantially delay the transition to the new bandplan and, consequently, the advanced services that the new bandplan supports. The concept of Proponent-driven transitions was developed by WCA, NIA and CTN to avoid impediments to transitions. Strangely (given SBC’s current posture), the WCA, NIA and CTN approach to determining the Proponent and empowering it to manage transitions was supported by SBC in its response to the *NPRM*.¹⁷ By adopting a single Proponent approach, the *Report and Order* has assured that transitions can be done quickly, smoothly and fairly, and the rights and responsibilities of the Proponent accomplish these broad goals. And that is exactly what SBC had sought. SBC advised the Commission that “[i]n order for that process to work, the proponent should have the right to impose a default solution if an impasse remains at the end of [the Transition

¹⁶ See Coalition Proposal, App. B at 18-19.

¹⁷ See Reply Comments of SBC Communications, WT Docket No. 03-66, at 6 (filed Oct. 23, 2003).

Planning Period]” because “[w]ithout such certainty for proponents, incumbents would be able to engage in strategic behavior to appropriate all gains to be had from the transition; intelligent planning would be impossible; and the efficient use of this spectrum would be delayed further – none of which would serve the public interest.”¹⁸

Curiously, although SBC has now reversed course and objects to the concept of there being a single Proponent in a given BTA, it fails to identify an alternative mechanism for developing a Transition Plan and effectuating the transition. Does SBC contemplate allowing each licensee to develop its own approach, with the Commission selecting the “best”? Clearly, the industry cannot afford the delay that such a process necessarily entails, and the Commission does not have the resources to resolve these sorts of controversies. Or, does SBC contemplate that transitions will be delayed until all of the licensees in a market agree on a common plan? This approach does nothing but empower those who seek delay to extract greenmail or protect entrenched interests. Suffice it to say that if SBC prevails, the result would create an environment in which multiple Broadband Radio Service (“BRS”) and EBS licensees across a region could suffer inordinate delays in deploying new services at the hands of a single licensee. This is precisely what has plagued the industry for the past two decades, and what must be avoided here.

IV. ADOPTION OF ADDITIONAL SAFE HARBORS WILL AVOID TRANSITIONS DISPUTES.

While WCA disagrees with SBC’s opposition to a single Proponent, WCA certainly agrees with SBC that the adoption of additional safe harbors will reduce the potential for transition-delaying disputes by providing licensees and Proponents with greater certainty regarding their rights and responsibilities under certain scenarios.¹⁹ Thus, WCA urged the Commission on reconsideration to adopt three safe harbors advanced in the original Coalition Proposal – Safe Harbors #3, #4 and #9.²⁰

¹⁸ *Id.*

¹⁹ *See* SBC Opposition at 10.

²⁰ *See* WCA Petition at 22-24.

No one has opposed adoption of Safe Harbor #9 (which addresses those situations in which EBS licensees utilize their spectrum for point-to-point links). And, save for IMWED, no one has opposed the adoption of the other safe harbors proposed by WCA.²¹ To the contrary, NIA and CTN urged the Commission to adopt Safe Harbors #3 and #4 and others have evidenced support for the proposals.²² IMWED's attack on these proposed safe harbors is misplaced.

Safe Harbor #3 is designed to address situations in which an EBS licensee is entitled under Section 27.1233(b) to multiple program tracks in the MBS. It affords the Proponent the option either to digitize the EBS licensee's operations so that it can operate on its single default MBS channel or to arrange one or more channel swaps under which the EBS licensee would obtain additional channels in the MBS in exchange for an equal number of its Lower Band Segment ("LBS") or Upper Band Segment ("UBS") channels.²³ IMWED objects to allowing Proponents to make channel swaps on the grounds that "EBS licensees could find themselves hampering or entirely losing their ability to

²¹ See IMWED Opposition at 4-6. That IMWED is expressing a view shared by no other industry interest is not unusual. For example, not one participant in this proceeding has supported IMWED's repeated call for a five-fold increase in the minimum EBS educational reservation, and it has drawn significant opposition. See WCA Opposition at 37-41; Clearwire Opposition at 2 n.2; Consolidated Opposition of Nextel Communications to Petitions for Reconsideration, WT Docket No. 03-66, at 26 (filed Feb. 22, 2005) ["Nextel Opposition"]; Consolidated Opposition of Sprint Corporation to Petitions for Reconsideration, WT Docket No. 03-66, at 7-9 (filed Feb. 22, 2005) ["Sprint Opposition"]; BellSouth Opposition at 8-9; Comments of WCA, NIA and CTN, WT Docket No. 03-66, at 128-31 (filed Sept. 8, 2003) ["Coalition NPRM Comments"]. Similarly, those commenting on IMWED's proposal to bar EBS licensees from granting purchase options in excess capacity leases drew universal scorn from those commenting. See WCA Opposition at 41-43; Consolidated Opposition of C&W Enterprises, Inc. to Petitions for Reconsideration, WT Docket No. 03-66, at 3 (filed Feb. 22, 2005) ["C&W Opposition"]; Consolidated Opposition of Wireless Direct Broadcast System to Petitions for Reconsideration, WT Docket No. 03-66, at 3 (filed Feb. 22, 2005) ["WDBS Opposition"]; Consolidated Opposition of SpeedNet L.L.C. to Petitions for Reconsideration, WT Docket No. 03-66, at 3 (filed Feb. 22, 2005) ["SpeedNet Opposition"]; Opposition of Digital Broadcast Corporation to Petition for Reconsideration, WT Docket No. 03-66, at 2 (filed Feb. 22, 2005) ["DBC Opposition"]; Sprint Opposition at 3-4; Nextel Opposition at 25; Clearwire Opposition at 2 n.2; Luxon Opposition at 5; BellSouth Opposition at 10. And, IMWED's call for all EBS excess capacity leases to be made available to the public without redaction of commercial sensitive terms was properly dismissed as "merely a ploy by an EBS licensee which holds licenses in multiple markets to gain access to the financial leasing terms of other EBS licensees for its own negotiating purposes." C&W Opposition at 4; WDBS Opposition at 4; SpeedNet Opposition at 4; DBC Opposition at 3. See also Nextel Opposition at 24-25; Sprint Opposition at 4-5; Clearwire Opposition at 2 n.2; Luxon Opposition at 6; BellSouth Opposition at 13.

²² See NIA/CTN Petition at 16-18; GMUIF Reply Comments at 4; BellSouth Opposition at 22.

²³ See WCA Petition at 22-24.

offer broadband wireless services on the LBS or UBS if they insist on maintaining their current number of video tracks.”²⁴ Apparently, IMWED believes that EBS licensees should be able to have their cake and eat it too – they should be able to demand two or more program tracks in the MBS while still retaining three channels in the LBS or UBS. Adoption of IMWED’s proposal would result in a windfall to the EBS licensee, while imposing unreasonable costs on the Proponent. To the extent that IMWED or any EBS licensee is concerned about retaining all three of its LBS or UBS channels, there is a simple answer – *request only a single programming track in the MBS*. Those EBS licensees seeking only a single program track in the MBS are guaranteed to have a full complement of three LBS or UBS channels.

IMWED also opposes adoption of Safe Harbor #4, which was developed to address the post-transition sharing of the three LBS/UBS channels and one MBS channel in an EBS channel group where multiple licensees currently share the group and are unable to reach agreement during the Transition Planning Period. IMWED is plainly wrong when it suggests that because Safe Harbor #4 provides for the LBS/UBS channels and the MBS channel to be disaggregated and split among the sharing EBS licensees, they would have “no practical means of using the pro-ration.”²⁵ In fact, today’s digital technology allows the use of bandwidths far narrower than the standard 5.5 MHz (LBS/UBS) and 6 MHz (MBS) channels allocated under the new bandplan, and thus the disaggregated channels would be quite usable. And, of course, if the sharing licensees would prefer full channels, they merely need to agree to split the group in some other fashion.²⁶

²⁴ IMWED Opposition at 5.

²⁵ *Id.* at 6. IMWED incorrectly assumes that there would have to be what it deems a “condominium” sharing of the single MBS channel. Under Safe Harbor #4, absent agreement among the sharing licensees, the Proponent could disaggregate the spectrum and each of the licensees would have their own independent facilities operating on their 3 MHz share. *See* Coalition Proposal, App. B at 24-25.

²⁶ Nonetheless, WCA would have no objection to adoption of IMWED’s alternative proposal under which each licensee in a shared situation would retain its existing channels under the new bandplan, *provided that it is clear the Proponent need only migrate the programming tracks and provide downconverters for the licensee of channel x4*. *See* IMWED Opposition at 6-7. It must be understood, however, that absent adoption of WCA’s proviso limiting migration and replacement downconverters to the licensee of channel x4, the Commission will be placing the Proponent in an untenable position – it will have an

V. WCA’S PROPOSALS FOR DETERRING UNREASONABLE TRANSITION PLANS AND UNNECESSARY COUNTERPROPOSALS SHOULD BE ADOPTED.

In its petition, WCA advanced proposals to deter the filing of both unreasonable Transition Plans and unnecessary counterproposals. Under WCA’s proposals, the Proponent would bear the legal, engineering and other costs incurred by any licensee that successfully demonstrates a proposed Transition Plan to be unreasonable in a dispute resolution proceeding. On the other hand, the Proponent could implement any counterproposal and, if it is later determined that the Proponent’s own Transition Plan was reasonable, the licensee submitting the counterproposal would be required to reimburse the additional costs incurred by the Proponent over and above the costs of implementing the initial Transition Plan.²⁷ While these proposals, which were part of the initial Coalition Proposal, received support,²⁸ HITN and IMWED have opposed.

Significantly, HITN concedes that “WCAI’s concern regarding greenmail and delay brought on by objections or counterproposals to otherwise reasonable transition plans is understandable,” but opposes the proposal because it could “chill” objections.²⁹ IMWED espouses similar concerns.³⁰ WCA’s approach is designed to deter the filing of challenges to reasonable Transition Plans, but there is no deterrent to opposing unreasonable ones. To the contrary, WCA’s proposal promotes challenges to unreasonable Transition Plans by providing for the recovery of the costs incurred by a licensee in successfully battling an unreasonable plan. Oddly, neither IMWED nor HITN advances any alternative mechanism to deter a licensee from imposing objections to a Transition Plan that is clearly reasonable. Absent some mechanism, licensees will be free to advance counterproposals that

obligation to migrate Licensee X’s programming to the MBS, but it will not have any designated spectrum in the MBS on which to transmit that programming.

²⁷ See WCA Petition at 25-26.

²⁸ See Clearwire Opposition at 2 n.2; Sprint Petition at 8-9.

²⁹ HITN Opposition at 4.

³⁰ See IMWED Opposition at 7.

are designed to delay transitions or increase a Proponent's costs. WCA's proposals present a balanced solution that should be adopted.

VI. WCA IS NOT OPPOSED TO A REASONABLE RESTRICTION ON THE ABILITY OF PROPONENTS TO WITHDRAW FROM A TRANSITION.

In its Petition, WCA demonstrated that during the Transition Planning Period a Proponent might discover information that would give it legitimate grounds to withdraw an Initiation Plan, and thus urged the Commission to reconsider its determination that once a Proponent submits an Initiation Plan, it cannot withdraw that plan without being thereafter barred from submitting another Initiation Plan for the area.³¹ The only substantive opposition to WCA's proposal came from HITN, which would only allow a Proponent six months to withdraw an Initiation Plan without penalty.³²

While WCA believes that HITN has overblown the risks associated with WCA's proposal, WCA certainly has no interest in seeing its approach abused. Thus, WCA suggests that a Proponent be permitted to withdraw an Initiation Plan without penalty only if it does so prior to the conclusion of the 90-day Transition Planning Period (with this deadline tolled during any transition-related dispute resolution proceedings). This accommodates WCA's concern that information will be developed during the Transition Planning Period that reasonably leads the Proponent to withdraw. However, once the Transition Planning Period has run its course and led to a fully-vetted Transition

³¹ See WCA Petition at 16-17.

³² See HITN Opposition at 5-6. In addition, IMWED offered its opinion that the Commission should not permit a Proponent to submit multiple Initiation Plans, but offers no rationale for its position. See IMWED Opposition at 9. IMWED also objects to proposals that the Commission eliminate the requirement of Section 27.1231(d)(4) that the Initiation Plan include a statement of "when the transition plan will be completed." See IMWED Opposition at 8-9. As WCA stated in seeking the change:

[a] potential proponent cannot possibly provide an accurate response to that inquiry until it has fully explored a variety of logistical issues during the Transition Planning Period. Section 27.1232(b)(1)(vi) requires that the Transition Plan – which is drafted by the proponent during the Transition Planning Period – provide an approximate timeline for the completion of the transition. There is no reason why compliance with that requirement is not sufficient.

WCA Petition at 15. While IMWED opines that it considers this "a particularly ill-advised idea," it completely fails to even acknowledge, much less refute, WCA's argument for changing the rule.

Plan, a Proponent should be committed to its approach and should not be permitted to withdraw without losing the right to file a second Initiation Plan.³³

VII. THE COST-SHARING RULES MUST FAIRLY ALLOCATE TRANSITION COSTS AMONG THOSE WHO BENEFIT.

WCA and Nextel have suggested that the entire cost incurred by a Proponent in transitioning a BTA should be reimbursed by subsequent commercial users of the LBS/UBS at such time as they commence operations based on their MHz-pops within the BTA.³⁴ IMWED, however, objects to the pooling of all of the costs associated with transitioning a given BTA, contending that because some channels may be more expensive than others to transition, reimbursement should be made on a channel-by-channel basis.³⁵ IMWED’s analysis is fundamentally flawed.

³³ The Commission should also clarify that where a Proponent fails to submit a Transition Plan within the period established by Section 27.1232(b) or fails to make an election regarding any counterproposals within the timeframe established by Section 27.1232(c), absent a prior waiver, the Proponent automatically loses that status and others are free to file Initiation Plans for the area in question.

³⁴ See WCA Petition at 21-22; Nextel Petition at 21-22. To avoid confusion, the Commission should make clear that: (i) the “MHz” to be utilized for purposes of the calculation is the amount of spectrum covered by a given call sign after the transition, including the LBS/UBS channels, the MBS channel, and the J/K band channels; (ii) to provide consistency in calculations, the population counts should be based on the 2000 United States Census; (iii) to the extent that a Proponent chooses to transition licenses within a second, adjoining BTA, the costs associated with transitioning those licenses should be reimbursed by commercial operators within that second BTA; and (iv) where the Geographic Service Area (“GSA”) of an incumbent license overlaps two or more BTAs, the costs associated with transitioning that license should be attributable to the BTA in which the GSA centroid is located. In addition, the Commission should adopt WCA’s proposal for clarifying how GSAs are defined. The counterproposal from IMWED is based on the mistaken assumption that applicants lacked protected service areas under the former rules, and ignores that former Sections 21.902(b)(3-4), 21.913(b)(3), 74.903(d) and 74.985(b)(5) all afforded applicants interference protection within such areas. See IMWED Opposition at 18.

³⁵ See IMWED Opposition at 9-10. IMWED also contends that an EBS licensee should be categorically excused from any cost-sharing, even when it provides a commercial service. *Id.* at 10-11. While IMWED suggests such a categorical exemption is appropriate because there is no “bright line” distinction between commercial and educational uses, WCA begs to differ. If an EBS licensee offers a service that is used exclusively “...to further the educational mission of accredited schools offering formal educational courses to enrolled students...” (see 47 C.F.R. § 27.1203(b)), it should be exempt from reimbursement. However, once an EBS licensee offers a commercial service that is not used exclusively for that purpose, a reimbursement obligation should attach. So, to use the example cited by IMWED, if an EBS licensee offers a streaming video service exclusively for educational purposes, no cost-sharing obligation arises. However, if the EBS licensee offers the same service to paying customers that can receive non-educational programming (whether or not educational material is also available), then the service should be deemed a commercial service and cost-sharing obligations should apply.

WCA certainly recognizes that some facilities may be more expensive to transition than others. However, what IMWED misses is that *no operator can take advantage of the new bandplan until all of the operations in a given locale are transitioned to the new bandplan*. In other words, no matter what channels an operator uses, it benefits by the transition of all of the channels in the BTA because the transition of all of these channels is a prerequisite to operation under the new bandplan. Thus, it is fundamentally fair to share the costs of the entire BTA transition among all operators that benefit from that transition, without regard to what particular channels they use.

For this reason, WCA is mystified by Independent MMDS Licensee Coalition’s (“IMLC”) inaccurate assertion that WCA is seeking to impose transition costs on BRS incumbent licensees “even when the BRS licensees are not themselves getting any benefit whatsoever from the transition.”³⁶ To the contrary, WCA is proposing that only one who utilizes the LBS or UBS for commercial purposes has an obligation to reimburse the Proponent for its share of the expenses. Thus, to the extent that a BRS incumbent licensee does incur a cost-sharing obligation under WCA’s proposal, it is not until that licensee commences the offering of commercial service in the LBS or UBS – at which time it clearly has reaped a substantial benefit from the transition.³⁷

However, WCA agrees with IMLC, among others, that the Commission should reject Clearwire’s proposal that cost-sharing reimbursement payments be due almost immediately upon

³⁶ Opposition of the Independent MMDS Licensee Coalition to Petitions for Reconsideration, WT Docket No. 03-66, at 11-12 (filed Feb. 22, 2005)[“IMLC Opposition”].

³⁷ IMLC also complains that the proposals advanced by Clearwire and WCA for cost-sharing do not provide for a phase-out of the reimbursement obligation over a ten year period. *See id.* at 8. While IMLC is correct in noting that the Commission phased out the PCS microwave relocation cost-sharing obligations over ten years because of the benefits that inherently accrue to the first entrant, that situation is distinguishable. What IMLC ignores is that here, even without a phase-out, the Proponent may never secure reimbursement of all of the costs of a transition save its *pro rata* allocation. That is because no reimbursement will ever be due with respect to the MHz-pops that are associated with an EBS call sign that is not leased for commercial LBS/UBS use. As IMLC recognizes, the PCS process was designed, in effect, to make the first entity clearing microwave spectrum “pay” somewhat for the benefit it realized by being the first to market. In the case of the BRS/EBS transition, the Proponent will “pay” because certain EBS licensees are likely to be “free riders” and the costs of their transition must be borne by the Proponent even though the Proponent has no commercial access to their spectrum. As such, adopting a ten year phase-out of cost-sharing would be a “double whammy” that would only deter transitions.

completion of a given transition.³⁸ Rather, WCA suggests that at the time commercial service is deployed in the LBS or the UBS, the operator (whether a licensee or a lessee) should reimburse the Proponent based on the MHz-pops in the BTA that the operator holds licenses for or that are associated with any call sign that the operator leases in whole or in part. This approach is fundamentally fair to both the Proponent (since it provides for reimbursement across an operator’s entire spectrum holdings, despite the fact that some of its spectrum is likely to be held in reserve for expansion as the system grows or used to meet EBS educational reservations) and to the operator (since, consistent with the PCS microwave relocation rules, it defers any cost-sharing obligation until the operator actually commences service and begins to enjoy the benefits of the Proponent’s labors).³⁹

However, WCA must disagree with IMLC that the Commission should impose an absolute reimbursement cap of \$75,000 per four channel group.⁴⁰ IMLC appears to have pulled this figure from thin air, as it bears no rational relationship to the likely reasonable cost of the most expensive transitions – those where the Proponent must digitize an EBS operation because it is entitled to the migration of multiple analog program tracks under Section 27.1233(b) and the operator is unable to arrange sufficient channel swaps to permit the transmission of those program tracks using analog technology over multiple channels in the MBS. Moreover, the Proponent will always bear its *pro rata* allocation of the transition costs. Thus, IMLC’s concern that the Proponent may not exercise sufficient control over costs appears to be misplaced.⁴¹ Of course, if a Proponent advances a

³⁸ *Id.* at 10. *See also* Sprint Opposition at 11-13; Nextel Opposition at 9-10; BellSouth Opposition at 22.

³⁹ WCA has proposed one exception – that the cost-sharing obligation associated with every BRS channel 1 and 2 station be borne by the Advanced Wireless Service auction winner(s) responsible for relocating the BRS channel 1 or 2 facility in question to the 2.5 GHz band. *See* WCA Petition at 21 n.34. That proposal has not been opposed by any participant in this proceeding.

⁴⁰ *See* IMLC Opposition at 11.

⁴¹ *Id.* (a cap “will also encourage transition Proponents to maintain a tight rein on the costs they incur.”). WCA agrees with Nextel that the Commission should reject Clearwire’s proposal to require an independent appraisal of any transition that in total exceeds an arbitrary monetary threshold. *See* Nextel Opposition at 7. Given that some transitions are likely to be quite expensive, no matter how frugal the

Transition Plan that appears unreasonably expensive to implement, Section 27.1232(c) affords any licensee in the BTA with an opportunity to challenge the costs as unreasonable and submit a less expensive counterproposal.

VIII. SELF-TRANSITIONS CANNOT OCCUR UNTIL AFTER THE INITIATION PLAN DEADLINE.

As WCA detailed in its Opposition, there is substantial support in the record for providing a licensee that is not subject to an Initiation Plan one last opportunity to self-transition following the deadline for filing Initiation Plans and before the Commission cancels the license in exchange for bidding credits.⁴² The procedures governing self-transitions will have to be carefully developed so that self-transitions occur on a coordinated basis that minimizes interference, and WCA, NIA and CTN currently are discussing the alternatives. Such coordination is essential to avoid massive interference among licensees because every licensee will operate following the transition on spectrum licensed to some other licensee today. As the record developed in response to the *NPRM* reflects, one of the critical roles a Proponent plays is coordinating the transitions activities so that all of the affected licensees convert to the new bandplan simultaneously.⁴³ During the self-transition phase, Commission rules will have to serve as a proxy for the Proponent, providing a window (presumably brief) during which self-transitions will occur and thereafter banning all operations under the old bandplan save for MVPD opt-outs.

Because the Proponent plays such a critical role in coordinating the migration of licensees from their current spectrum to their assignment under the new bandplan, WCA vigorously opposes any suggestion that licensees be permitted at their own expense to self-transition prior to the deadline for filing Initiation Plans. While IMWED suggests that licensees be permitted to do so “[a]s a means

Proponent, while others may be far less expensive even if the Proponent incurs unreasonable expenses, no fixed benchmark of reasonableness can be established. The better course is that proposed by Nextel – allow those responsible for cost-sharing to seek arbitration of any disputed amount. *Id.* at 8.

⁴² See WCA Opposition at 19 n.56. See also NY3G Opposition at 3; BellSouth Opposition at 15-16; IIT Opposition at 6-9.

⁴³ See Reply Comments of WCA, NIA and CTN, WT Docket No. 03-66, at 44 (filed Oct. 23, 2003)[“Coalition NRPM Reply Comments”].

of circumventing abusive transition plans,⁴⁴ the appropriate response of a licensee to an unreasonable Transition Plan is to file a counterproposal pursuant to Section 27.1232(c), not to engage in unilateral action to the detriment of others in the market.

Adoption of IMWED’s proposal will lead either to massive interference as licensees relocate willy-nilly to spectrum that is not yet cleared of incumbent licensees, or to delays in deployment of wireless broadband services as Proponent-driven transitions are slowed until a self-transitioning licensee vacates its current spectrum. The self-transition process is intended to be a last chance for licensees in areas where no Proponent has materialized to preserve their authorizations – the Commission should not undermine the Proponent system by allowing premature self-transitions.⁴⁵

IX. THE COMMISSION SHOULD NOT EXPAND THE AUTOMATIC MVPD OPT-OUT BEYOND THAT PROPOSED BY WCA.

WCA is certainly pleased that the BRS Rural Advocacy Group is now endorsing the WCA’s proposal for an automatic MVPD opt-out, but must urge caution in addressing the proposal by the BRS Rural Advocacy Group under which a licensee that self-transitions and then elects to return its LBS and UBS spectrum for financial assistance in migrating to digital technology in the MBS would be permitted to operate under the old bandplan until such time as the Commission actually auctions

⁴⁴ See IMWED Opposition at 7. If the Commission is inclined to permit self-transitions prior to the Initiation Plan filing deadline, then it must do as IMWED suggests and make clear to licensees that such self-transitions are “at their own expense.” *Id.* Subsequent commercial users of the spectrum should have no obligation to provide those that self-transition early with compensation for their costs or with replacement downconverters. WCA does not oppose requiring those who use the LBS and UBS for commercial purposes to make reasonable reimbursements and to provide downconverters to those that self-transition after the Initiation Plan filing deadline – such an approach eliminates any disincentive to transition. But, there is no reason to impose such costs where the EBS licensee unilaterally acts without giving the Proponent-driven system an opportunity to transition the market.

⁴⁵ Illinois Institute of Technology (“IIT”) suggests that licensees be permitted to self-transition prior to the Initiation Plan filing deadline if all licensees with overlapping GSAs consent. See IIT Opposition at 9 n.22. Obviously, IIT recognizes the potential for interference posed by unilateral self-transitions. However, its approach does not resolve the problem, as it ignores the potential for cochannel interference between neighboring markets that will arise as licensees in one migrate to the new bandplan. Moreover, IIT’s approach will needlessly complicate the ability of a Proponent to transition other areas within the same BTA, since that Proponent would no longer be able to fully coordinate migration to the new bandplan within the BTA. If all of the licensees in a given market desire to migrate to the new bandplan, the simple solution is to agree to serve as Co-Proponents and to transition the BTA. The Commission need not complicate the transition system by allowing self-transitions as IIT proposes.

the LBS and UBS channels and the auction winner funds the migration of the licensee to digital operations in the MBS.⁴⁶ To the extent that this proposal only applies to licensees that are self-transitioning (in other words, does not apply to those licensees that are subject to a Proponent-driven transition), WCA believes it may hold promise. However, to allow any licensee that is the subject of a Proponent-driven transition to continue operating under the existing bandplan pending a future auction would ignore the interference that such a licensee can cause to wireless broadband operations in nearby markets, interference that is a matter of record before the Commission.⁴⁷ Presumably, a Proponent is proposing to transition the market in which the licensee operates because it intends to deploy a cellular system under the new bandplan. Where the licensee does not qualify for an automatic opt-out because it does not even serve 5% of the homes in its GSA or has not deployed digital technology, the equities weigh heavily in favor of expediting the transition. That is not to say the licensee does not have alternatives available to it – WCA’s Opposition addresses those alternatives in detail.⁴⁸ However, allowing such an MVPD to delay the deployment of service until the Commission successfully auctions its LBS/UBS spectrum stands the objectives of this proceeding on their head.

X. THE SPECTRAL MASK SHOULD BE MODIFIED.

The Commission should reject the arguments advanced by Clearwire against WCA’s proposal that Section 27.53(l)(2) be modified to eliminate the need for the filing of a “documented complaint” before a licensee can be required to meet the more stringent out-of-band emissions requirements for base stations.⁴⁹

⁴⁶ See BRS Rural Advocacy Group Opposition at 14.

⁴⁷ See, e.g., WCA Opposition at 27-28; Coalition NPRM Reply Comments at 48-51; Reply Comments of Wireless Communications Ass’n Int’l, National ITFS Ass’n and Catholic Television Network, RM-10586 at 31-33 (filed Nov. 29, 2002)[“Coalition Rulemaking Reply Comments”].

⁴⁸ See WCA Opposition at 29-30.

⁴⁹ See WCA Petition at 40-44.

Lost in Clearwire’s rhetoric is any appreciation for the complexity of what the Commission is attempting to do with the 2.5 GHz band – provide flexibility that will allow Time Division Duplex and Frequency Division Duplex technologies to peaceably co-exist, while at the same time maximizing spectral efficiency. The very proposals that Clearwire claims will “force licensees to comply with cumbersome Commission-imposed technical rules and procedures” are essential to providing the flexibility that the industry has sought (although WCA has always proposed that affected licensees be permitted to agree among themselves to less stringent requirements).⁵⁰ WCA’s objective is not, as Clearwire wrongly contends, to substitute rules for negotiated agreements, but rather to provide a fair and balanced fallback regulatory regime where licensees, whether acting in good faith or not, are unable to reach consensus.⁵¹

As WCA has previously noted, the fundamental problem with requiring the filing of a documented complaint before the more stringent base station mask can be invoked is that it requires the victim operator in a given market to suffer actual interference to its base station operations while it tracks down the source of the interference, documents its case, presents that case to the Commission and secures a favorable ruling. Clearwire is dead wrong when it asserts that “[t]here is no technical data in the record to support more restrictive masks.”⁵² *To the contrary, the record before the Commission in this proceeding leaves no doubt that where licensees in the same market utilize non-synchronized technologies, interference is inevitable absent additional attenuation of out-*

⁵⁰ Clearwire Opposition at 3.

⁵¹ *See id.* at 5.

⁵² *Id.* at 4. Clearwire’s attack on the rule proposed by WCA and Nextel for requiring fixed subscriber units mounted less than 20 feet above ground level to meet the more stringent mask if it causes documented interference is also badly misplaced. *See* WCA Petition at 45-46; Nextel Petition at 26-27. WCA and Nextel have recognized that subscriber transmission antennas mounted that low are not likely to cause interference because of ground clutter and terrain, and thus have crafted their approach so that the more restrictive mask need only be met where there is proof of interference. However, Clearwire would apparently allow such subscriber units to cause interference due to out-of-band emissions with impunity. *See* Clearwire Opposition at 5.

*of-band emissions by base stations by at least $67 + 10 \log (P)$.*⁵³ *The need for a more stringent operational restriction on base station out-of-band emissions is patent and, not surprisingly, the Coalition’s dual mask proposal drew substantial support from the technical community.*⁵⁴

As WCA noted in its Petition, “[t]he *Report and Order* does not explain how, given the clear need for non-synchronized operations to meet this benchmark, the public interest could possibly be advanced by requiring actual operations to suffer interference before the more restrictive mask can be invoked.”⁵⁵ In its zeal for rules that benefit the first entrant into a market without regard for the impact on others, Clearwire does not even attempt to answer this question. WCA believes the best interest of consumers will be served by adopting its approach to this issue on reconsideration, and thereby avoid the need for actual service to be disrupted before the dual mask is applied where non-synchronized technologies are employed in the same market.

XI. LICENSEES SHOULD NOT EXCEED THE MAXIMUM SIGNAL STRENGTH LIMIT AT THEIR BOUNDARIES ABSENT CONSENT.

The Commission should modify Section 27.55(a)(4) to allow a licensee to exceed the maximum signal strength limit at its GSA boundary only with the consent of the neighboring licensee.⁵⁶ While Clearwire and IMLC both oppose this proposal, neither addresses the fundamental

⁵³ See Coalition NPRM Comments at 53 (emphasis added).

⁵⁴ See, e.g., Reply Comments of Axcera, LLC, WT Docket No. 03-66, at 4 (filed Oct. 22, 2003); Reply Comments of California Amplifier Inc., WT Docket No. 03-66, at 2 (filed Oct. 22, 2003); Reply Comments of CelPlan Technologies, Inc., WT Docket No. 03-66, at 3-4 (filed Oct. 22, 2003); Reply Comments of Comspec Corp., WT Docket No. 03-66, at 2 (filed Oct. 22, 2003); Reply Comments of Flarion Corp., WT Docket No. 03-66, at 2 (filed Oct. 23, 2003); Reply Comments of IPWireless, Inc., WT Docket No. 03-66, at 3-4 (filed Oct. 23, 2003); Reply Comments of Navini Networks, Inc., WT Docket No. 03-66, at 2 (filed Oct. 23, 2003); Reply Comments of Soma Networks, Inc., WT Docket No. 03-66, at 2 (filed Oct. 23, 2003). Interestingly, although two Clearwire subsidiaries, Fixed Wireless Holdings LLC, and NextNet Wireless Inc., filed formal comments and reply comments in response to the NPRM, neither took issue with the Coalition Proposal’s approach to base station out-of-band emissions. See Comments of Fixed Wireless Holdings LLC, WT Docket No. 03-66 (filed Sept. 8, 2003); Comments of NextNet Wireless Inc., WT Docket No. 03-66 (filed Sept. 8, 2003); Reply Comments of Fixed Wireless Holdings LLC, WT Docket No. 03-66 (filed Oct. 23, 2003); Reply Comments of NextNet Wireless LLC, WT Docket No. 03-66 (filed Oct. 23, 2003).

⁵⁵ WCA Petition at 43.

⁵⁶ See *id.* at 38-40. See also Nextel Petition at 30-31.

question WCA has posed – why should the Commission encourage licensees to deploy facilities that will have to cease operating immediately upon the initiation of service by a neighbor?⁵⁷ Whatever benefits an individual licensee may believe it gains from the current rule, they pale compared to the consumer dislocation that will incur when service must be discontinued at a moment’s notice because a neighboring licensee deploys.

Unless the Commission bans excessive power absent consent, the Commission should:

require any licensee that does exceed the 47 dB μ V/m benchmark to notify the cochannel licensee in the adjacent GSA so that its neighbor will know of the potential for interference. And, the Commission should make clear that the licensee exceeding the 47 dB μ V/m signal strength must *immediately* bring its operations into compliance once it becomes aware that a neighbor has commenced service, even if that means shutting down facilities that are providing service to consumers.⁵⁸

Clearwire’s assertion that a notice requirement is “burdensome” is absurd on its face – asking a licensee that plans to exceed the signal limit at its boundary to alert its neighbor is hardly too much to ask.⁵⁹ Otherwise, the innocent neighbor will face the burden of tracking down the source of the interference, demanding remedial action and suffering until the signal is brought within the rule. If anyone should face a burden, it should be the interferer, not the victim. Tellingly, while Clearwire otherwise opposes having the Commission “serve as traffic-cop to enforce compliance,”⁶⁰ here Clearwire seeks *carte blanche* to violate a rule without the consent of the neighboring licensee, potentially forcing the Commission into a “traffic cop” role when the neighbor deploys service.

XII. THE HEIGHT BENCHMARK RULES SHOULD PROMOTE PROMPT COMPLIANCE.

In its petition, Nextel proposed certain alterations to Section 27.1221 – the height benchmarking rule – to assure a prompt and efficient mitigation of cochannel interference with minimal Commission intervention. Clearwire has opposed those modifications, and WCA

⁵⁷ It should be noted that no one, not even Clearwire or IMLC, has opposed WCA’s suggestion that if the Commission retains the rule, it clarify that a licensee is deemed to have commenced service for purposes of the rule once it begins testing of its facilities. *See* WCA Petition at 39.

⁵⁸ *See* WCA Petition at 39-40 (emphasis in original).

⁵⁹ *See* Clearwire Opposition at 9.

⁶⁰ *Id.* at 5.

subsequently has attempted to reach an accommodation that can be embraced by the entire industry. Although that effort has not been entirely successful, the proposed revisions to Section 27.1221 set forth in Appendix A are endorsed by WCA, BellSouth, Sprint and Nextel.

Clearwire's proposal to bring a third party clearinghouse into the height benchmarking process is ill-defined – exactly what is it that the clearinghouse would do and how would that assist licensees suffering interference?⁶¹ The height benchmarking concept is not complicated, and it is difficult to imagine what value a clearinghouse adds. Moreover, interjection of a clearinghouse into the process will increase costs and add delay to what should be a simple matter of identifying the interfering base station and effectuating a cure. In addition, Clearwire's suggestion that a victim licensee go through some undefined process to “document” a height-benchmark problem adds unnecessary delay – Section 27.1221 bars undesired signal levels in excess of -107dBm/5.5 MHz at the victim base station, and notice from the victim that this level has been exceeded should be enough to trigger to interferer's obligation to bring its signal level within the rule.

* * *

For the reasons set forth above and in WCA's petition for partial reconsideration, WCA urges the Commission to amend the rules adopted by the *Report and Order* as suggested by WCA.

THE WIRELESS COMMUNICATIONS
ASSOCIATION INTERNATIONAL, INC.

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⁶¹ See Clearwire Opposition at 7.

Section 27.1221 is revised by replacing subsections (b), (c), (d) and (e) and adding a new subsection (f) as follows:

§27.1221 Interference Protection

* * * * *

(b) *Height Benchmarking.* Height benchmarking is defined for pairs of base stations, one in each of two neighboring geographic service areas (GSAs). The height benchmark for a particular station in a service area relative to a base station in an adjacent service area is based upon the distance-squared between the station and the GSA service area boundary measured along the radial between the respective stations, divided by 17. That is, the height benchmark is based upon $h_b = D^2/17$. A base station antenna will be considered to be within its applicable height benchmark relative to another base station if the height of its centerline of radiation above average elevation (HAAE) calculated along the straight line between the two base stations in accordance with Sections 24.53(b) and (c) of this chapter does not exceed the height benchmark (h_b). A base station antenna will be considered to exceed its applicable height benchmark relative to another base station if the HAAE of its centerline of radiation calculated along the straight line between the two base stations in accordance with Sections 24.53(b) and (c) of this chapter exceeds the height benchmark (h_b).

(c) *Protection for Receiving Antennas Not Exceeding the Height Benchmark.* Absent agreement between the two licensees to the contrary, if a transmitting antenna of one BRS/EBS licensee's base station exceeds its applicable height benchmark and such licensee is notified by another BRS/EBS licensee that it generating an undesired signal level in excess of -107 dBm/5.5 MHz at a receive antenna of a co-channel base station that is within its applicable height benchmark, then the licensee of the base station that exceeds its applicable height benchmark shall either limit the undesired signal at the receiving base station to -107dBm/5.5 MHz or less or reduce the height of its transmission antenna to no more than the height benchmark. Such corrective action shall be completed no later than:

(i) 24 hours after receiving such notification, if the base station that exceeds its height benchmark commenced operations after the station that is within its applicable height benchmark; or

(ii) 60 days after receiving such notification, if the base station that exceeds its height commenced operations prior to the station that is within its applicable height benchmark.

For purposes of this section, if the interfering base station has been modified to increase the EIRP transmitted in the direction of the victim base station, it shall be deemed to have commenced operations on the date of such modification.

(d) *No Protection from a Transmitting Antenna not Exceeding the Height Benchmark.* The licensee of a base station transmitting antenna that does not exceed its applicable height benchmark shall not be required pursuant to subsection (c) above to limit that antennas undesired signal level to -107dBm/5.5 MHz or less at the receive antenna of any co-channel base station.

(e) *No Protection for a Receiving-Antenna Exceeding the Height Benchmark.* The licensee of a base station receive antenna that exceeds its applicable height benchmark shall not be entitled

pursuant to subsection (c) above to insist that any co-channel base station limit its undesired signal level to -107dBm/5.5 MHz or less at such receive antenna.

(f) *Information Exchange.* A BRS/EBS licensee shall provide the geographic coordinates, the height above ground level of the center of radiation for each transmit and receive antenna, and the date transmissions commenced for each of the base stations in its GSA within 30 days of receipt of a request from a co-channel BRS/EBS licensee with an operational base station located in an adjacent GSA. Information shared pursuant to this section shall not be disclosed to other parties except as required to ensure compliance with this section.

CERTIFICATE OF SERVICE

I, Karla E. Huffstickler, hereby certify that the foregoing Consolidated Reply to Oppositions to Petition for Reconsideration was served this 9th day of March, 2005 by depositing true copies thereof with the United States Postal Service, first class postage prepaid, addressed to the following:

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