

**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 Amendment of Parts 21 and 74 to Engage in Fixed Two-Way Transmissions)	MM Docket No. 97-217
)	
Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Licensing in the Multipoint Distribution Service and in the Instructional Television Fixed Service for the Gulf of Mexico)	WT Docket No. 02-68 RM-9718
)	
Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets)	WT Docket No. 00-230

**REPLY TO OPPOSITIONS TO PETITION FOR PARTIAL
RECONSIDERATION OF NEXTEL COMMUNICATIONS**

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Executive Summary

Nextel Communications supports the Commission's effort to establish the regulatory environment necessary to permit carriers to make the hundreds of millions of dollars of investment needed to deliver wireless interactive multimedia services to consumers. The Commission should reject opposition pleadings from parties that want to erect new obstacles to commercial development of this spectrum.

The Commission's current co-proponent process would delay transitions if all potential co-proponents failed to agree on the thousands of discrete decisions necessary to transition a band. Therefore, Nextel joins WCA, Clearwire, and other major licensees in the 2.5 GHz band in once again urging the Commission to unambiguously embrace the industry-consensus, first-in-time approach to selecting a single proponent for a geographic area.

A proponent-driven transition process offers a single, comprehensive, near-simultaneous method of transitioning all licensees in a geographic area. By comparison, uncoordinated "self transitions" will cause chaotic, unpredictable interference in the 2.5 GHz band. Where a proponent has submitted a comprehensive plan to transition the band in a given geographic area, therefore, "self transitions" should not be permitted.

Ensuring faster implementation of the Commission's technical rules will accelerate the deployment of wireless interactive multimedia services. The Commission should adopt stronger incentives for compliance with the rules governing:

- Height Benchmarking;
- Out-of-Band Emissions; and
- Excess Power at Geographic Boundaries.

The faster licensees comply with these technical rules, the more quickly new entrants can deploy innovative wireless services to consumers.

Licensees should reimburse proponents according to an easily administered MHz-pops formula. All licensees in the 2.5 GHz band will benefit from the transition; therefore, all licensees should pay a *pro rata* share of the transition expenses once commercial operations commence.

Licensees should respond to pre-transition data requests in a timely and accurate manner. Given the enormous opportunity cost of delaying a comprehensive band realignment, the Commission should impose a deadline of twenty-one days to provide basic station information to a proponent. Because the twenty-one day deadline would have no meaning if licensees could ignore it without penalty, licensees that fail to respond to pre-transition data requests should, at a minimum, lose the right to replacement down converters or the right to having their programming tracks transitioned to the MBS at proponents' expense.

Finally, proponents that withdraw a transition plan should have one additional opportunity to submit a new plan. The Commission's overly harsh, one-strike-and-out rule does not account for the unreliability of the Commission's BRS/EBS licensing data bases.

By establishing intermediate deadlines and clear rules wherever possible, the Commission can increase investment incentives to deploy innovative wireless services in this spectrum.

Table of Contents

I.	A Clear Rule Should Establish a Single Proponent for Each Geographic Area.	2
II.	If Self-Transitions Are Permitted at All, They Should Be Allowed Only Where No Proponent Has Emerged.....	6
III.	Adopting Common Sense Technical Rules Will Minimize Disputes and Accelerate Deployment of Wireless Interactive Multimedia Services.	7
	A. Permitting Carriers to Delay Compliance with Height Benchmarks Will Delay, Disrupt, or Deny the Deployment of Innovative Wireless Services to Consumers.....	7
	B. Licensees that Use Customer Premises Equipment That is Likely to Generate Interference Should Have to Comply with Tighter Emission Masks Upon Request of the Victim Licensee.	10
	C. Market Forces, Not Government Mandates, Represent the Best Method of Permitting Excess Power at Boundary of a Licensee’s Geographic Service Area.....	12
IV.	Licensees Should Reimburse Proponents Based on a Simple MHz-pops Calculation.	15
V.	The Commission Should Adopt Measures to Ensure that All Licensees Respond to Pre-Transmission Data Requests Quickly and Accurately.	17
VI.	Proponents Should Have One Opportunity to Resubmit a Transition Plan If No Other Proponent Has Submitted a Transition Plan in the Interim.	19
VII.	Conclusion	20

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**PETITION FOR PARTIAL RECONSIDERATION OF
NEXTEL COMMUNICATIONS**

Nextel Communications supports the Federal Communications Commission's effort to accelerate the pace of broadband deployment in the United States by ensuring a timely and cost-effective transition of the 2.5 GHz band.¹ In prior pleadings, Nextel

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*, 19 FCC Rcd 14165 (2004) (*BRS/EBS Realignment Order*).

sought to accelerate the transition to a new band plan through reconsideration of a handful of issues.² Some parties opposed Nextel's proposals for reform or submitted alternative proposals that would prolong the uncertainty that has plagued the Broadband Radio Service (BRS) and the Educational Broadband Service (EBS) since their inception. Nextel opposes these proposals in favor of measures that will provide the investment incentives necessary for carriers to deliver new multimedia products and services to consumers.

I. A Clear Rule Should Establish a Single Proponent for Each Geographic Area.

The industry-consensus Coalition Proposal asked the Commission to adopt the first-in-time approach to determine the proponent in any given geographic area. The current rules, however, appear to require all potential proponents to agree on how they will transition a particular geographic area before they file their transition Initiation Plans with the Commission.³ Nextel joins WCA, Clearwire and other major licensees in the 2.5 GHz band in urging the Commission to embrace the industry-consensus, first-in-time approach to selecting a single proponent for a geographic area.⁴

² See Petition for Reconsideration of Nextel Communications (Nextel Petition). Unless otherwise noted, all petitions and oppositions cited in this filing were submitted in WT Docket No. 03-66.

³ *A Proposal for Revising the MDS and ITFS Regulatory Regime, submitted by the Wireless Communications Association International, Inc. the National ITFS Association and the Catholic Television Network*, RM-10586, App. B at 16 (filed Oct. 7, 2002) (Coalition Proposal) (“The transition process contemplates a single Proponent . . . [T]he Proponent that first served all of its required Transition Notices should be considered the Proponent for purposes of the transition process.”).

⁴ Nextel Petition at 11 (“Rather than attempt to force competing proponents to reach a comprehensive agreement on the transition plan before the first station is retuned, the Commission should adopt the industry-consensus Coalition Proposal and permit only the licensee that files a transition plan first to serve as the proponent for that geographic

In its petition, Nextel explained that while the Commission’s *BRS-EBS Realignment Order* requires numerous competing companies to agree on the elaborate detail necessary to transition markets, the Order failed to define when an entity becomes a “proponent” or even to impose a deadline by which the universe of likely “co-proponents” must declare themselves.⁵ In effect, the Commission’s open-ended “co-proponent” approach to the transition could award laggards a veto right over the transition plans of licensees such as Nextel that are ready, willing, and able to deploy.⁶ By imposing a “co-proponent” process on licensees, a proponent that is otherwise prepared to transition a band might theoretically need to wait as long as three years before the transition could commence to ensure that all potential proponents are offered the opportunity to become co-proponents before the Initiation Plan filing window closes. “In the worst case scenario,” Nextel explained, “a single party could use the co-proponent requirement to force an otherwise prepared proponent to delay start of the transition – and, thus, service to consumers – until the objecting party has prepared its own business for commercial deployment.”⁷

area.”); Clearwire Opposition at 11 (“The Commission’s first-in-time rule regarding designation of the proponent is well-reasoned and will serve to expedite transitions and wireless broadband deployments.”); WCA Opposition at 2 (“The Commission should adopt Nextel’s proposal to amend Section 27.1231 to specify that the first party to submit an initiation plan pursuant to Section 27.1231(d) should be deemed the proponent for the area in question, and the addition of co-proponents should be at the proponent’s discretion.”).

⁵ Nextel Petition at 11.

⁶ Nextel Petition at 12-13.

⁷ Nextel Petition at 13.

In its opposition, SBC readily concedes the Commission’s apparent co-proponent process will delay transitions if co-proponents cannot agree on the thousands of discrete decisions necessary to transition a band.⁸ Nevertheless, SBC supports requiring co-proponents to agree on the complex minutiae of the 2.5 GHz transition process before they can transition the first incumbent to new band plan. SBC states that it “sympathiz[es]” with concerns that the co-proponent approach that it endorses will cause inordinate delay.⁹ Yet SBC’s “sympathy” appears to be nothing more than an attempt to delay the 2.5 GHz transition while the incumbent local exchange carrier (ILEC) continues to “explore” wireless broadband technologies in the 2.5 GHz band.¹⁰ SBC has *no* licenses or leases in the 2.5 GHz band, according to publicly available records, and, thus, has no apparent interest in ensuring a timely transition of the 2.5 GHz band. The Commission should reject SBC’s attempt to delay the transition process and deny Americans access to new wireless services by saddling licenses with a cumbersome “co-proponent” process.

SBC, a mammoth ILEC with operating revenues of more than \$40 billion in 2004, claims that the burdensome co-proponent requirement will somehow benefit small licensees.¹¹ As the Commission recognized in its *BRS-EBS Realignment Order*, however, transitioning a geographic area will prove quite costly and will require a proponent to carry those expenses on its books for a potentially long period of time until other

⁸ SBC Opposition at 10.

⁹ SBC Opposition at 8.

¹⁰ SBC Opposition at 2.

¹¹ SBC Opposition at 10.

commercial licensees in the band commence operations and reimburse the proponent. Accordingly, the only licensees likely to prove able to transition the band are those that possess the substantial financial resources necessary to pay for the transition and carry those expenses for an indefinite period of time. Because the rules governing proponents will apply to a handful of licensees or lessees in the band capable of financing the transition process, the Commission adopted a host of other rule provisions to ensure broad-based cooperation among participants. First, the Commission adopted a series of detailed rules governing information exchanges to ensure that the proponent coordinates broadly with all licensees in the band. Second, the Commission established detailed standards for the systems, equipment, and services that the proponent must provide. Third, the Commission created implementation deadlines, performance “safe harbors,” and even a detailed arbitration process to handle disputes. The Commission’s transition rules, not the ill-defined co-proponent process, ensure that all licensees equitably participate in the transition.

Eliminating the co-proponent process in favor of a first-in-time rule will simply ensure that the transition proceeds quickly. If the Commission does not adopt a first-in-time rule, however, then some other mechanism is needed to determine a *single* proponent for a geographic area. Ideally, any alternative mechanism for determining a single proponent should select the licensee most likely to deploy services in the area most quickly.¹² Whatever “tie-breaking” mechanism is used to select a single proponent for a

¹² Nextel Petition at 6. Contrary to the implications of SBC, neither Nextel nor other potential proponents will derive any special benefit from undertaking the costly and time-consuming transition activities. SBC Opposition at 9-10. The proponent does not decide the channels on which other licensees will operate, choose the technology that other licensees use, or determine how or where other licensees construct facilities. The

geographic area, the Commission must establish a process that does not require two or more potential co-proponents to resolve a detailed implementation schedule over some open-ended time period. However desirable an indefinite delay in the deployment of wireless services might be for an ILEC like SBC that continues to “explore” its wireless options in the 2.5 GHz band, delay disserves the public interest in the timely deployment of innovative new wireless services to the American consumers.

II. If Self-Transitions Are Permitted at All, They Should Be Allowed Only Where No Proponent Has Emerged.

The Commission should not allow self-transitions where a proponent has submitted a comprehensive plan to transition the band in a given geographic area. The Commission adopted a proponent-driven transition process because that process offers a single, comprehensive, near-simultaneous method of transitioning all licensees in a geographic area.¹³ The proponent-driven transition process also accounts for the unique incumbency issues that have prevented the 2.5 GHz band from realizing its full potential.

While “self transitions” might be a reasonable alternative in those few areas where no proponent exists to coordinate a comprehensive move to the new band plan by the end of three-year window for filing Initiation Plans, “self transitions” are not a universal panacea. For more than forty years, the Commission has assigned licensees to a wide variety of different, often irregularly shaped and non-contiguous geographic service

proponent’s actions, in short, have no bearing on a licensee’s ability to decide how to use their licensed spectrum. If any licensee believes a proponent has not adequately addressed its concerns, moreover, the licensees have the option of invoking arbitration to obtain relief. The arbitration process and, not incidentally, the prospect of delayed reimbursement provide the proponent with powerful incentives to treat licensees equitably consistent with the Commission’s rules.

¹³ *BRS-EBS Realignment Order*, 19 FCC Rcd. 14165, at ¶ 72.

areas within each BTA in the midst of a highly sensitive, interleaved band structure. If licensees in the 2.5 GHz band were permitted to “self transition” in a patchwork fashion, the potential for interference would increase as each licensee attempted to make the transition on its own. Without some type of overarching coordination among licensees, the increased potential for interference during the transition would generate an inordinate number of disputes among aggressor and victim licensees, delay the transition, and prevent commercial use of the band for years.

If “self transitions” are to be permitted at all, the “self transition” process should represent a last-gasp process to avoid the exigencies of the Commission’s “alternative transition mechanism,” which would essentially dissolve existing spectrum assignments in exchange for transferable bidding-offset credits. The Commission should reject demands that it allow “self transitions” where a proponent might propose a comprehensive transition plan for the band, or that it otherwise expand the “self-transition” concept beyond its limited utility as a failsafe device to prevent license revocation when no proponent has emerged.¹⁴ Proposals to extend self-transition beyond this limit serve no one’s interest besides those who hope to game the system to extract private concessions from carriers that want to swiftly deploy in the band.

III. Adopting Common Sense Technical Rules Will Minimize Disputes and Accelerate Deployment of Wireless Interactive Multimedia Services.

A. Permitting Carriers to Delay Compliance with Height Benchmarks Will Delay, Disrupt, or Deny the Deployment of Innovative Wireless Services to Consumers.

Rather than limit all antennas to a single maximum height, the Commission adopted rules that rely on the *relative* difference in height between two towers to

¹⁴ IIT Opposition at 9 n.22; IMWED Opposition at 7.

determine how much interference protection to grant: those that exceed the benchmark may be required to mitigate interference caused to those that fall below the benchmark.¹⁵ In its petition, Nextel proposed minor changes to the height-benchmarking process, such as a sixty-day deadline, to make that process faster and more efficient.¹⁶ Nextel reasoned that the sooner carriers comply with the height-benchmarking requirement, the more quickly new entrants can deploy innovative wireless services to American consumers.

Clearwire, however, opposes these changes. First, Clearwire asserts, falsely, that Nextel asked the Commission to require non-compliant licensees to reduce their tower heights.¹⁷ Nextel is not proposing to require, nor do the height-benchmarking limits require, any licensee to reduce their transmitter heights. The height-benchmarking rules simply require that licensees comply with an emissions level of -107 dBm/5.5 MHz observed at the victim's receiver; carriers can comply with this limit however they see fit. Nextel supports this rule, and nothing in its petition suggests otherwise.¹⁸ Second, Clearwire claims that tower height and locations represent "critical competitive information" capable of being abused.¹⁹ In response, Clearwire proposes a cumbersome "clearinghouse" to sequester tower information, but fails to specify how this

¹⁵ *BRS/EBS Realignment Order*, 19 FCC Rcd. 14165, at ¶ 123; 47 C.F.R. § 27.1221.

¹⁶ Nextel Petition, App. A, at 36.

¹⁷ Clearwire Opposition at 6.

¹⁸ Nextel proposed a predicted interference model to determine height-benchmarking compliance. Despite the many benefits of a predicted interference model, resolving disagreements over the proper parameters for a predicted model could delay the transition. Therefore, Nextel withdraws its support for a predicted interference model to determine height benchmarking compliance in favor of a slightly modified version of the Commission's adopted rule. *See infra* App. A.

¹⁹ Clearwire Opposition at 6.

“clearinghouse” would be funded or how its operator would be selected. Nextel disagrees that raw tower height and location information could be used for competitive advantage. Nevertheless, in an attempt to assuage Clearwire’s fears, Nextel recommends incorporating a confidentiality provision into the height-benchmarking rule.²⁰ Third, Clearwire asserts that the Commission should permit carriers that cause interference to continue interfering until the victim carrier presents some type of “documented evidence” of “impermissible interference,” and then delay relief until after the licensee fails to resolve the interference for some unspecified period.²¹ In other words, Clearwire proposes that customers of spectrum efficient, low-site, low-power carriers should gain relief from harmful interference only *after* their carriers prepare and submit a “documented interference complaint” to the spectrum inefficient, high-site licensee that exceeds the height benchmark.

As Nextel explained in its petition, “[w]hen interference is likely, victim licensees will routinely need to receive greater protection against interference and they should not have to meet the strictures of repeatedly submitting a formal ‘documented interference complaint.’”²² In this case, when a carrier exceeds the applicable height benchmark, interference is likely; therefore, the non-compliant carrier – not the victim licensee – should bear the burden of immediately remedying the interference. Any other rule would require carriers to “prepare, submit, and respond to thousands or tens of thousands of ‘documented interference complaints’ simply to obtain protection they will routinely

²⁰ *See infra* App. A.

²¹ Clearwire Opposition at 7.

²² Nextel Petition at 27.

require.”²³ Neither the carriers, nor the public would benefit from the delay that Clearwire’s proposal would entail.

B. Licensees that Use Customer Premises Equipment That is Likely to Generate Interference Should Have to Comply with Tighter Emission Masks Upon Request of the Victim Licensee.

In its *BRS-EBS Realignment Order*, the Commission found that Customer Premises Equipment (CPE) with fixed antennas located above ground level would “have a greater potential for generating unwanted electromagnetic interference” than ordinary devices used on the ground.²⁴ The Commission, however, chose not to impose an emissions mask requirement on fixed antennas located well above ground level. In their petitions, WCA and Nextel provided a detailed explanation of how external, fixed antennas located above ground level increase the risk of interference to adjacent-channel licensees.²⁵ The petitioners, therefore, urged the Commission to require operators that deploy interference-generating CPE twenty feet above ground level (AGL) to observe more stringent emissions masks in certain situations.²⁶ WCA and Nextel submitted their proposed modifications of the Commission’s newly adopted rules after discussions with manufacturers and operators, including Clearwire.

²³ Nextel Petition at 28.

²⁴ *BRS-EBS Realignment Order*, 19 FCC Rcd. 14165, at ¶ 118.

²⁵ Nextel Petition at 27-28 & n.64 (explaining how CPE with “13 dBi external antenna gain will raise the effective OOB limit [in the band] to 0 dBm/MHz”).

²⁶ WCA Petition at 48-51 (discussing how existing emissions masks do not “sufficiently reduce the risk of interference caused by out-of-band emissions from fixed user stations that utilize a transmission antenna that is affixed to the outside of a building”); Nextel Petition at 27-28 & App. A (same).

In its opposition, however, Clearwire ignores the Commission’s own findings on the interference threat posed by elevated CPE, fails to address WCA’s extensive discussion of this issue, and falsely claims that no technical evidence was presented by Nextel to demonstrate how elevated CPE causes harmful interference.²⁷ Both Nextel and WCA provided ample technical reasoning and analysis to support the proposition that elevated CPE causes harmful out-of-band emissions (OOBE). First, CPE with an external antenna having a 13 dBi antenna gain produces OOBE that are as high as those of a full-power base station. As summarized in the table below, a portable station typically provides 3 dBi of antenna gain; however, CPE with 13 dBi antenna gain increases the effective OOBE limit by 13 dBi and causes OOBE *ten times higher than a typical portable station*.

Transmitter	OOBE Limit	Antenna Gain	Effective OOBE
Base Station	-13 dBm	16 dBi	+ 3 dBm
Portable Station	-13 dBm	3 dBi	-10 dBm
Customer Premises Equip.	-13 dBm	13 dBi	+ 0 dBm

Second, external antennas for CPE devices are usually mounted on homes between the top of an upper-story window and the bottom of the roofline. Mounting CPE antennas at this height places an antenna’s emissions path above ground clutter and other obstructions that might otherwise attenuate harmful interference traveling to a base station.²⁸ The reduced path loss of CPE with elevated antennas increases the risk of harmful interference to other licensees’ base stations.

²⁷ Clearwire Opposition at 5.

²⁸ By comparison, portable station antennas typically operate only 1.5 meters above ground level.

Third, PCS mobile stations typically report in-building penetration loss of approximately 10-20 dB. By comparison, elevated CPE with external antennas would not benefit from in-building penetration loss and, instead, could only rely on ordinary path loss to the victim base station. As a result, operators that use elevated CPE with external antennas are much more likely to cause harmful interference to adjacent-channel base stations than are operators that use other types of CPE.

To ensure timely deployment in the 2.5 GHz band and prevent consumers from suffering harmful interference in the future, the Commission should require licensees that want to deploy this type of interference-generating CPE to comply with a more stringent OOB mask. Victim licensees should not have to document individual interference complaints attributable to tens of thousands, hundreds of thousands, or even millions of small, consumer-owned devices. As a practical matter, tracking the sale and installation of these devices would prove impossible.

The Commission should reject Clearwire's unsupported claims that elevated CPE with external antennas will not cause harmful interference, and should require carriers that want to use this interference-generating CPE to observe somewhat more stringent emission masks. Doing so will make the entire 2.5 GHz more useable and encourage the rapid deployment of innovative wireless services to the public.

C. Market Forces, Not Government Mandates, Represent the Best Method of Permitting Excess Power at the Boundary of a Licensee's Geographic Service Area.

Nextel supports the WCA proposal to limit harmful interference from excessive power levels. Clearwire, which intends to exceed standard power limits to reduce its

capital and operating expenses, opposes these changes.²⁹ According to Clearwire, customers of Nextel, Sprint, BellSouth, and other carriers that do not intend to deploy the interference-generating, high-site architecture favored by Clearwire should first have to suffer dropped connections or slow or garbled transmissions before Clearwire must implement interference-abatement measures. Customers, of course, will not tolerate unpredictable system outages while a carrier waits for the incumbent to power down its facilities, and neither should the Commission.

Section 27.55(a)(4) of the Commission's rules permits licensees to operate above normal power limits until a geographically adjacent licensee commences operations.³⁰ In its petition, Nextel explained that the Commission's current rules provide no mechanism for a new entrant to notify the old licensee of its existence or, conversely, for the old licensee to notify potential new operators that it has chosen to exceed the maximum signal strength level.³¹ Rather than have the Commission establish yet another notification regime, however, Nextel proposed that the Commission rely on market forces and allow excess power only where the potential victim licensee consents.³²

²⁹ Clearwire Opposition at 8-10.

³⁰ *BRS-EBS Realignment Order*, 19 FCC Rcd. 14165, App. C., § 27.55(a)(4).

³¹ Nextel Petition at 30-31.

³² Nextel Petition at 31. Through marketplace agreements, licensees could distinguish between incidental interference that may cross over a geographic service area (GSA) boundary, which presents few problems, and the purposeful coverage of an area outside a geographically adjacent licensee's GSA, which, as explained below, creates grave impediments to commercial development of the 2.5 GHz band.

Clearwire opposes this recommendation.³³ Clearwire asserts that parties will fail to negotiate excess-power agreements in the marketplace. Clearwire claims, without support, that only a government grant of authority to extend power into an adjacent licensee’s territory will permit a licensee to operate at excess power until that adjacent licensee commences operations. To solve the notice problem that Nextel identified, moreover, Clearwire urges the Commission to rely on a new, burdensome, third-party “clearinghouse” to serve notice on parties affected by incumbents’ excess-power operations.³⁴ This proposal suffers from the same flaws as the Clearwire’s proposed “clearinghouse” for addressing height-benchmarking concerns under section 27.1221, including a lack of any detail regarding how this body would be funded or how its administrator would be selected.³⁵ More importantly, Clearwire ignores the adverse effects of its proposal on investment in the 2.5 GHz band: if an incumbent licensee can extend its signal without consent and provide service to customers in other licensees’ geographic market areas, potential new entrants will have less incentive to enter this market.

Section 27.55(a)(4) was intended to allow incidental or trivial emissions over a geographic boundary until a geographically adjacent licensee could deploy its facilities. Taken to its logical conclusion, however, Clearwire’s apparent interpretation of this provision would permit an operator with only one site-based license to operate a

³³ Clearwire Opposition at 8-10.

³⁴ Clearwire Opposition at 10 n.26.

³⁵ See discussion *supra* § III(A).

nationwide network throughout other licensees' territories.³⁶ Even if a carrier used its excess power only to serve additional customers within some moderate distance of its authorized footprint, that operator would have to reduce power and abruptly discontinue service to customers as soon as a new carrier entered a geographically adjacent market. The resulting consumer confusion and disruption would create yet another obstacle to rapid, nationwide deployment in this already heavily encumbered band.

In the 2.5 GHz band, the Commission should rely on market forces, not mandates, wherever feasible. In this case, carriers can exceed their standard power limits through free, arms-length negotiations with geographically adjacent licensees. The Commission should not supplant market negotiations with a government-mandated right of access to a new entrant's licensed geographic service area.

IV. Licensees Should Reimburse Proponents Based on a Simple MHz-pops Calculation.

Commercial beneficiaries of the transition must reimburse the proponent for their shares of EBS transition costs.³⁷ The Commission did not specify exactly how to calculate each licensee's *pro rata* share; therefore, Nextel's petition recommended calculating these costs based on the number of MHz-pops that the commercial licensee could theoretically serve.³⁸ Using a MHz-pops reimbursement formula would allow the

³⁶ The Commission adopted signal strength limits sufficient to ensure that most technologies could provide service to the edge of the boundary when operating at maximum power without interfering with adjacent-market licensees.

³⁷ See 47 C.F.R. § 27.1233(c) ("BRS licensees in the LBS or UBS must reimburse the proponent(s) a pro rata share of the cost of transitioning the facilities they use to provide commercial service, either directly or through a lease agreement with an EBS licensee.").

³⁸ Nextel Petition at 21-22.

proponent to quickly and easily determine the liability of all licensees in direct proportion to the amount of expenses the proponent had to occur to transition the band.³⁹

IMWED, however, opposes a MHz-pops reimbursement formula. Instead, IMWED envisions licensees basing their reimbursements on proponents' out-of-pocket costs in transitioning the spectrum that each new entrant uses.⁴⁰ This proposal ignores the common benefit that all licensees will enjoy as a result of the new band plan. Moreover, no two parties are likely to agree on precisely how expenses should be allocated over the geographically irregular licensing structure that exists in this band. In addition, part of the virtue of the Commission's proponent-driven transition plan is that proponents are able to achieve economies of scope and scale when they transition an entire geographic area at once. Particularly for planning and back-office functions, it will not always be immediately clear which licensees bear what amount of financial responsibility, and disputes over proper reimbursement levels are nearly certain to erupt. The disputes that would likely arise under IMWED's plan would unfairly delay reimbursement to proponents and act as a drag on investment in the 2.5 GHz band. Accordingly, the Commission should allocate transition expenses among commercial operators according to the number of MHz-pops contained in each commercial operator's geographic service area.⁴¹

IMWED attempts to muddy the waters further by proposing that the Commission adopt a transition-reimbursement mechanism trigger based on the type of user involved,

³⁹ To implement this approach, however, the Commission must clarify the boundaries of overlapping GSAs as indicated in Nextel's petition. *See* Nextel Petition at 22.

⁴⁰ IMWED Opposition at 9-10.

⁴¹ For a detailed rule recommendation, *see infra* App. B.

rather than the type of use deployed.⁴² The Commission should reject this proposal. In the 2.5 GHz band, distinguishing commercial operations from non-commercial operations is not difficult; however, distinguishing commercial *users* from non-commercial *users* is inordinately complex because non-commercial operators routinely lease a portion of their spectrum to commercial operators. The Commission should reject IMWED's transition-reimbursement scheme and adopt a simple MHz-pops approach instead.

V. The Commission Should Adopt Measures to Ensure that All Licensees Respond to Pre-Transition Data Requests Quickly and Accurately.

In its petition, Nextel encouraged the Commission to require parties to respond to pre-transition data requests in a timely, complete, and accurate manner. IMWED and HITN oppose Nextel's request.⁴³ Nextel recommended a few clear rules governing the timing and content of responses to pre-transition data requests, including an obligation to respond to pre-transition data requests within twenty-one days or risk losing certain rights as a licensee. These provisions will ensure timely transitions by limiting the number of opportunities for licensees to game the system.

IMWED, however, claims that no milestones or clarifications of any kind are needed because "no pattern of problems" exists.⁴⁴ IMWED is wrong. For more than forty years, no commercial licensee has succeeded in deploying a widely available, commercially successful service in the 2.5 GHz band. An inordinate number of former 2.5 GHz licensees have declared bankruptcy. And the vast majority of the band remains

⁴² IMWED Opposition at 10-11.

⁴³ IMWED Opposition at 7-8; HITN Opposition at 2-4.

⁴⁴ IMWED Opposition at 8.

largely idle due to its legacy license structure. A more pronounced “pattern of problems” could not be imagined.

HITN, meanwhile, singles out the proposed twenty-one day deadline for criticism.⁴⁵ As Nextel pointed out in its petition, section 27.1321(f) of the Commission’s rules creates no deadline or any apparent obligation for licensees to respond to pre-transmission data requests.⁴⁶ When it adopted the *BRS-EBS Realignment Order* on June 10, 2004, the Commission placed all licensees on notice that they would need to provide proponents with key information about their licensed facilities. The proposal that WCA and Nextel submitted would provide an additional twenty-one days to provide fundamental stations operation and location information upon receipt of a formal request from a proponent.⁴⁷ To the extent any licensees are actually concerned that twenty-one days is insufficient time to identify basic operating parameters of its licensed system, licensees can prepare *now* to respond to a proponent’s request. A twenty-one deadline, thus, provides licensees ample time to provide proponents with rudimentary information about their licensed operations, such as antenna location, antenna height, and the number of EBS video programming or data transmission tracks used. Given the enormous opportunity cost of delaying a comprehensive band realignment, the Commission should impose a deadline of twenty-one days to provide basic station information to a proponent.

Deadlines have no meaning if Commission licensees can ignore them without penalty. Therefore, non-responsive licensees should, at a minimum, lose the right to

⁴⁵ HITN Opposition at 2-4.

⁴⁶ 47 C.F.R. § 27.1321(f); *BRS-EBS Realignment Order*, 19 FCC Rcd. 14165, at ¶ 84.

⁴⁷ Nextel Petition at 9-10; WCA Petition at 22.

replacement down converters or the right to having their programming tracks transitioned to the MBS at the proponents' expense. Under Nextel's proposed framework, potential proponents will be able to begin their transition planning activities by a date certain without having to modify their plans repeatedly to account for late-arriving responses. The Commission should reject demands from IMWED and HITN to eschew firm deadlines or allow deadlines to pass without consequence. Doing so would prevent timely transition of the 2.5 GHz band and delay service to the public.

VI. Proponents Should Have One Opportunity to Resubmit a Transition Plan If No Other Proponent Has Submitted a Transition Plan in the Interim.

If a proponent withdraws an Initiation Plan and no other proponent has filed another Initiation Plan, the Commission should permit the former proponent to submit a second Initiation Plan.⁴⁸ The Commission's overly harsh, one-strike-and-out rule does not account for the unreliability of the Commission's BRS/EBS licensing data.⁴⁹

IMWED and HITN oppose Nextel's proposal.⁵⁰ The Commission should reject their arguments against giving a proponent one fair opportunity to correct an erroneous transition plan filing.⁵¹ Information material to the transition may emerge only after an Initiation Plan is filed. Rather than reward frivolous or "casually filed" plans, this minor change would help proponents tailor Initiation Plans to their actual environments and accelerate the transition process.⁵²

⁴⁸ Nextel Petition at 15.

⁴⁹ *BRS/EBS Realignment Order*, 19 FCC Rcd. 14165, at ¶ 87.

⁵⁰ IMWED Opposition at 9; HITN Opposition at 5-6.

⁵¹ Nextel Petition at 15-16.

⁵² HITN Opposition at 6.

VII. Conclusion

The opposition parties propose a series of measures that would create new government mandates, frustrate market incentives, and delay the transition process. The Commission can provide additional certainty and stronger investment incentives by denying these oppositions and adopting the limited changes proposed in Nextel's petition for reconsideration.

Respectfully submitted,

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Appendix A

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 geographic service area within 30 days of receipt of a request from a co-channel BRS/EBS licensee with an operational base station located in an adjacent geographic service area. Information shared pursuant to this section shall not be disclosed to other parties except as required to ensure compliance with this section.

Appendix B:

Cost-Sharing Formula

If T = The total cost of the transitioning non-commercial EBS licensees within the BTA,

P_{BTA} = The total population within the transitioned BTA based on 2000 census data.

BW_{BTA} = 194 MHz. (2496 to 2690 MHz).

Then, the value of the transitioned BTA to each licensee is:

$$B_{BTA} = T/P_{BTA} * BW_{BTA} \quad (\$/MHz*pops).$$

The amount of the reimbursement for a specific station in the BTA is calculated separately for each channel frequency owned since the GSA size and shape can change on a channel by channel basis. The cost reimbursement is calculated by taking the MHz*pops calculation for each frequency and GSA, multiplying by B_{BTA} , and then summing the total for all licensed and leased spectrum within the BTA.

Certificate of Service

I, Jennifer Danielson, hereby certify that on this 9th day of March, 2005, I caused true and correct copies of the foregoing Reply to Oppositions to Petition for Partial Reconsideration of Nextel Communications to be mailed, postage prepaid, to:

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