

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

In the Matter of )  
 )  
Report of the Wireless Broadband ) GN Docket No. 04-163  
Access Task Force )

**COMMENTS OF THE WIRELESS COMMUNICATIONS ASSOCIATION  
INTERNATIONAL, INC.**

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## EXECUTIVE SUMMARY

As the trade association of the wireless broadband industry, The Wireless Communications Association International, Inc. (“WCA”) applauds the *Report* of the Wireless Broadband Access Task Force (“WBATF”) and the significant time and effort the WBATF has devoted to developing the findings and recommendations therein. Certainly, the *Report* leaves no doubt that wireless technology has become an indispensable component of the Commission’s broadband agenda, and that the Commission’s regulatory framework for spectrum-based services will bear directly on the speed of broadband deployment to all areas of the country. WCA is submitting these comments both to express its general support for the WBATF’s recommendations and to note specific areas of concern that must be addressed to ensure that wireless technologies reach their full potential as a driver of broadband deployment throughout the United States.

As emphasized in WCA’s prior filings both in this docket and elsewhere, it is imperative that the Commission’s rules and policies for wireless broadband remain focused on core principles that are essential to the success of flexible use. Most significantly, the Commission must afford licensees the regulatory clarity and certainty that is essential for industry to fund the multi-billion dollar investment necessary to expand wireless broadband services into areas where no broadband is today available and to satisfy emerging consumer demand for portable and mobile wireless broadband applications. WCA remains concerned, however, that these core principles still are not being given full effect in the Commission’s rules and policies for wireless broadband.

The principle of regulatory certainty requires that the Commission assure licensees that changes in Commission rules and policies will not compromise their ability to provide interference-free service to consumers that have increasingly high expectations of their broadband service providers. WCA applauds the Commission’s recent *Report and Order* in its *Cognitive Radio* docket (ET Docket No. 03-108), in which the Commission stated in no uncertain terms that it would not sacrifice licensees’ interference protection on the altar of “smart” radios. The Commission must remain equally vigilant in protecting incumbent licensees from interference when considering other non-traditional concepts for spectrum allocation, new approaches to licensing, and band-specific service rules.

In a similar vein, the Commission must continue to carefully balance the ease of entry associated with its license-exempt regulatory paradigm against the benefits of licensing systems that provide greater interference protection to service providers. WCA believes that the Commission should continue to explore and refine innovative licensing systems that speed broadband deployment by streamlining application processes, allowing many of the benefits of the license-exempt regulatory regime while still affording basic interference protection to those that invest in the band. The Commission’s adoption of the proposal by WCA’s Over 60 GHz Committee for a highly streamlined application process specific to “pencil beam” wireless links in the 70/80/90 GHz bands is a prime example of innovative licensing that affords licensees the benefit of interference protection without imposing excessive application processing delays. More recently, in its *Report and Order* in ET Docket No. 04-151, the Commission adopted a nationwide licensing/base station registration system for the 3650-3700 MHz band (a band that is well-suited for wireless broadband) that holds promise for lowering barriers to entry, while still

promoting high quality service. However, the Commission's approach there is potentially flawed by ambiguity regarding the interference mitigation obligations that a newcomer must meet relative to previously registered base stations. Unless appropriately clarified, this could deter aggressive deployment of wireless broadband service at 3650-3700 MHz.

Finally, an especially compelling example of the problems that arise with a lack of regulatory certainty is the ongoing plight of Broadband Radio Service ("BRS") Channel 1 and 2 licensees who are being displaced from the 2150-2162 MHz band to create auctionable spectrum for Advanced Wireless Service ("AWS") licensees. It has now been four years since the Commission first suggested that it might forcibly relocate BRS licensees from the 2150-2162 MHz band to free that spectrum for AWS. Yet, notwithstanding three formal rounds of comment and significant *ex parte* input, to this day all BRS licensees at 2150-2162 MHz know is that at some point they will be migrated to spectrum within the reconfigured 2.5 GHz band – *the Commission has yet to adopt the procedures, reimbursement rules and timeframes that will govern relocation of BRS licensees from the 2150-2162 MHz band.* Moreover, the Commission still must address that the relocation spectrum for BRS channel 1 at 2496-2500 MHz is polluted by other users that retain a primary allocation but will interfere with BRS channel 1. Simply put, there is no sound reason for the Commission to perpetuate the regulatory uncertainty surrounding the relocation of BRS Channel 1 and 2 licensees – WCA's filings have long provided the Commission with all the information it needs to adopt rules and policies that will permit those licensees to move into their new spectrum in the reconfigured 2.5 GHz band in a manner that makes them whole.

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The Wireless Communications Association International, Inc. (“WCA”), by its attorneys, hereby submits its comments in response to the Commission’s March 8, 2005 *Public Notice*<sup>1</sup> soliciting comment on the March 8, 2005 *Report* of the Wireless Broadband Access Task Force (“WBATF”).<sup>2</sup>

**I. INTRODUCTION.**

WCA is the trade association of the wireless broadband industry. Its membership includes a wide variety of wireless broadband system operators, equipment manufacturers and consultants interested in the deployment of licensed spectrum for wireless broadband service in, *inter alia*, the 700 MHz, 2.1 GHz, 2.3 GHz, 2.5 GHz, 3.6 GHz, 18 GHz, 24 GHz, 28 GHz, 31 GHz, 38 GHz and 70/80/90 GHz bands. WCA is also the founder of the License-Exempt Alliance (“LEA”), a nationwide coalition of service providers, equipment vendors and others who offer or support the provision of license-exempt wireless broadband service via the 902-928 MHz, 2.4 GHz and 5 GHz bands under Part 15 of the Commission’s Rules. WCA was active in the proceedings leading up to the release of the WBATF *Report*, submitting its views in written

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<sup>1</sup> Public Notice, Federal Communications Commission, *Wireless Broadband Access Task Force Seeks Public Comment on Task Force Report*, GN Docket No. 04-163, DA 05-610 (rel. Mar. 8, 2005).

<sup>2</sup> *Connected & On The Go – Broadband Goes Wireless*, Report by the Wireless Broadband Access Task Force, Federal Communications Commission, GN Docket No. 04-163 (rel. Mar. 8, 2005) [“*Report*”].

comments and through the appearance of WCA President Andrew Kreig at the WBATF's May 19, 2004 Forum in Washington, DC.<sup>3</sup> Whether in its own name or under the auspices of the LEA, WCA has participated in virtually every major Commission proceeding affecting the deployment of licensed and license-exempt spectrum for wireless broadband service.

WCA applauds the *WBATF Report* and the significant time and effort the WBATF staff has devoted to developing the findings and recommendations therein. The Report leaves no doubt that wireless technology already has become an indispensable component of the Commission's broadband agenda, and that the Commission's regulatory framework for spectrum-based services will bear directly on the speed of broadband deployment to all areas of the country. Indeed, the record before the WBATF includes numerous examples of how wireless broadband operators already have accelerated deployments throughout the country in both the licensed and unlicensed bands, which reflects the low barriers to entry for use of the unlicensed bands and the plethora of spectrum that can be enlisted for a wireless broadband deployment.<sup>4</sup> The *WBATF Report* also reaffirms that much of the wireless broadband industry's success to date can be traced to the Commission's preference for market-based rules and policies that prioritize flexible use over regulatory intervention. WCA thus completely agrees with the WBATF's conclusion that "a more flexible and market-oriented approach to spectrum policy is the better course to provide incentives for users to migrate to more technologically innovative and efficient use of the spectrum, and to provide the services that markets determine are most valued, including broadband services."<sup>5</sup>

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<sup>3</sup> See Comments of Wireless Communications Ass'n Int'l, GN Docket No. 04-163 (filed June 3, 2004) ["WCA Initial Comments"].

<sup>4</sup> See *Report* at 33-41 and Appendix C; WCA Initial Comments at 4-8 (discussing examples of 2.5 GHz wireless broadband deployments).

<sup>5</sup> *Report* at 64.

While WCA generally supports many of the more specific recommendations in the *Report*, it is imperative that the Commission's rules and policies for wireless broadband remain focused on certain core principles the Commission has already recognized as essential to the success of flexible use. Most importantly, to spur the multi-billion dollar investment necessary to bring wireless broadband services to areas with no alternative source of broadband and to meet the evolving consumer demand for portable and mobile broadband service, the Commission must afford service providers regulatory clarity and certainty. WCA's positions on the issues raised by the *Report* have long been a matter of record in other Commission proceedings, and thus WCA will repeat them only in summary fashion here. Ultimately, however, a continued focus on regulatory clarity and certainty throughout the Commission's broadband rules and policies is necessary to ensure that the benefits of the WBATF's good work are fully realized.

## II. DISCUSSION.

Broadly speaking, at least three crucial factual findings can be drawn from the WBATF *Report*:

- Wireless broadband is a highly adaptable service capable of supporting almost limitless applications;<sup>6</sup>
- Technological innovation will continue to push wireless broadband towards greater portability and mobility, which in turn will further improve the quantity and quality of broadband services available throughout the entire country;<sup>7</sup> and
- The increased connectivity enabled by wireless broadband will yield invaluable cost efficiencies and other benefits for municipal, educational, health, public safety and a myriad of other services, in addition to driving greater productivity and economic growth in the private sector.<sup>8</sup>

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<sup>6</sup> *Id.* at 2-5.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 2-5, 12.

To promote further deployment of wireless broadband, the WBATF *Report* offers a series of recommendations with which WCA largely agrees.<sup>9</sup> For example, WCA has long been an ardent advocate of promoting wireless broadband deployment via flexible use, secondary markets and elimination of outdated rules and/or inappropriate inconsistencies in how like services are regulated. As the Commission is aware, WCA's regulatory philosophy was embodied in the industry proposal (co-authored by WCA) to reband and rewrite the Commission's rules for the spectrum at 2.5 GHz.<sup>10</sup> The Commission adopted a sizable portion of that proposal in its *Report and Order* in WT Docket No. 03-66, and WCA has since requested reconsideration of certain aspects of that decision and suggested additional rule amendments in response to the Commission's *Further Notice of Proposed Rulemaking* in the same docket.<sup>11</sup> WCA's pending proposals seek to fine-tune the rules adopted in the *Report and Order* to promote an efficient and cost-effective transition to the new 2.5 GHz band plan, to assure that licensees will have an appropriate timeframe for deploying the most appropriate technologies (including technologies based on the IEEE 802.16e standard that is still under development), and to provide those that do deploy with appropriate interference protection, without jeopardizing the flexibility afforded every neighboring licensee to deploy the technology of its own choosing. If

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<sup>9</sup> *Id.* at 6-9.

<sup>10</sup> See "A Proposal for Revising The MDS and ITFS Regulatory Regime," The Wireless Communications Association International, Inc. *et al.*, RM-10586, (filed Oct. 7, 2002).

<sup>11</sup> See *Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands*, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 14165 (2004) ["2.5 GHz R&O and FNPRM"]; Petition for Reconsideration of Wireless Communications Ass'n Int'l, WT Docket No. 03-66 (filed Jan. 10, 2005); Consolidated Opposition to Petitions for Reconsideration of Wireless Communications Ass'n, WT Docket No. 03-66 (filed Feb. 22, 2005); Consolidated Reply to Oppositions to Petition for Reconsideration of Wireless Communications Ass'n Int'l, WT Docket No. 03-66 (filed Mar. 9, 2005); Comments of Wireless Communications Ass'n Int'l on Further Notice of Proposed Rulemaking, WT Docket No. 03-66 (filed Jan. 10, 2005); Reply Comments of Wireless Communications Ass'n Int'l on Further Notice of Proposed Rulemaking, WT Docket No. 03-66 (filed Feb. 8, 2005).

WCA's pending proposals are granted, the Commission's new regulatory framework for the 2.5 GHz band will achieve the WBATF's objectives, *i.e.*, facilitate rapid, but rational, deployment of 2.5 GHz-based broadband services (particularly mobile and portable broadband services) under the reconfigured 2.5 GHz bandplan, permit the flexible use of whatever technologies are dictated by market demand, and assure reasonable interference protection to operations in the band. Indeed, the regulatory regime proposed by WCA for the 2.5 GHz band can service as a model for balancing technical flexibility and reasonable protection against interference.

Likewise, WCA endorses proactive policies for unlicensed spectrum that promote voluntary frequency coordination, "best practices," and stricter Commission enforcement of Part 15 to ameliorate harmful interference caused by unlicensed users against each other and against those in licensed spectrum.<sup>12</sup> Indeed, the *Report* specifically recognized the efforts by WCA's LEA to develop a workable "best practices" model for the unlicensed bands:

Recently, the License Exempt Alliance has been working to establish "WISP University," which is a comprehensive collection of voluntary industry best practices. Topics cover a wide range of subjects, from network planning and design, to compliance with Commission rules, to some of the business aspects of running a WISP. We support the efforts of the License Exempt Alliance and others to develop voluntary industry best practices among unlicensed users. While we believe that these efforts may have significant benefits, we feel that it is important that best practices be developed and governed by private industry, without regulatory intervention.<sup>13</sup>

WCA remains concerned, however, that certain core principles originally endorsed by the Commission's Spectrum Policy Task Force ("SPTF") still are not being given full effect in the Commission's rules and policies for wireless broadband. In particular, the SPTF emphasized

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<sup>12</sup> See *Report* at 5-6. WCA and the LEA also believe that the WBATF's recommendations for improving dialogue between the Commission and unlicensed wireless Internet service providers ("WISPs") will facilitate more efficient and professional use of the unlicensed bands without burdening unlicensed WISPs with excessive regulation. *Id.* at 59-60.

<sup>13</sup> *Id.* at 58-59.

that “a level of certainty regarding one’s ability to continue to use spectrum, at least for some foreseeable period, is an essential prerequisite to investment, particularly in services requiring significant infrastructure installation and lead time.”<sup>14</sup> The principle of regulatory certainty requires that the Commission assure incumbent licensees that changes in Commission rules and policies will not compromise their ability to provide consumers the high quality of service, that the marketplace is increasingly demanding.<sup>15</sup> To that point, WCA applauds the Commission’s recent *Report and Order* in its *Cognitive Radio* docket (ET Docket No. 03-108), in which the Commission stated in no uncertain terms that it would not sacrifice the interference protection afforded incumbents on the altar of “smart” radios:

Some parties envision that the full development of cognitive radio capabilities will, or should, lead to a vastly different model for spectrum use. These “futurists” see “smart radios” operating on an opportunistic basis, finding idle spectrum, using it as they need, then vacating the band for others to use, all without human intervention. This model presumes no need for spectrum policy, allocation tables, or regulatory bodies to manage spectrum resources. While we recognize that this model exists, we also believe that many technical, cost, and business issues will need to be addressed in the marketplace before widespread deployment of such radios may take place. Therefore, we need not, and do not, address today the potential implications of such a radical paradigm shift.<sup>16</sup>

The Commission must remain equally vigilant in protecting the ability of licensees to provide interference-free services when considering other “advanced” or non-traditional concepts for spectrum allocation or interference protection. For example, the WBATF recommends that the Commission “move even more aggressively to put valuable spectrum on the market through further improvements and streamlining of the Commission’s spectrum

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<sup>14</sup> Report of the Spectrum Policy Task Force, Federal Communications Commission, ET Docket No. 02-135, at 23 (Nov. 2002)[“*SPTF Report*”].

<sup>15</sup> *Id.* at 61 (stating that changes in federal spectrum policy “cannot, and should not, be implemented without giving serious consideration to the reliance interests of incumbent spectrum users.”).

<sup>16</sup> *Facilitating Opportunities for Flexible, Efficient, and Reliable Spectrum Use Employing Cognitive Radio Technologies*, ET Docket No. 03-108, Report and Order, FCC 05-57, at ¶ 3 (rel. Mar. 11, 2005).

allocation and assignment process.”<sup>17</sup> WCA certainly does not oppose the idea of making more spectrum available for wireless broadband - for example, WCA supports both expedited clearing of incumbent television stations from the 700 MHz band and the recent reallocation of the 3650-3700 MHz band in a manner designed to promote its use for broadband services. However, regardless of the means by which the Commission finds more spectrum for wireless services, it must not compromise the rights of existing license holders to develop and deploy their spectrum in accordance with market demand. Similarly, while WCA supports exploration of non-traditional configurations of spectrum, such as asymmetric pairing,<sup>18</sup> the Commission must act cautiously to assure that the spectrum can be used flexibly, in a technologically neutral framework.<sup>19</sup>

The Commission’s band-specific service rules, and particularly its interference protection rules, must consistently account for the possibility that the flexible use model will permit technically incompatible systems to exist in close proximity, posing a threat of harmful interference to each other.<sup>20</sup> WCA urges the Commission to consistently examine whether the appropriate response is to limit flexibility in the interest of promoting technical consistency (as it did in establishing rules for the 1.7/2.1 GHz Advance Wireless Service (“AWS”) bands) or in

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<sup>17</sup> *Report* at 6.

<sup>18</sup> *Id.* (recommending that the Commission, “when adopting spectrum band plans, consider new configurations – such as asymmetric pairing – that may be particularly conducive to wireless broadband applications.”).

<sup>19</sup> As a general matter, it likely is preferable to allocate spectrum in a manner that permits those interested in asymmetric pairing to acquire spectrum that can be used in that configuration when combined with symmetrically paired spectrum, those interested in symmetric pairing can avoid acquiring additional spectrum they don’t need.

<sup>20</sup> For the same reason, the Commission must take care when implementing the WBATF’s recommendation that it “consider providing incumbent licensees in restrictive bands with additional flexibility, either by granting significant new flexibility to existing licensees or using creative market-based auction mechanisms.” *Report* at 7.

affording maximum technical flexibility paired with more complex rules designed to mitigate interference (as it did in the 2.5 GHz band).<sup>21</sup> Each approach has its place.

Similarly, while WCA is not opposed in principle to permitting license-exempt wireless broadband providers to use higher power under certain circumstances, the Commission can not ignore that such higher power operations may have a preclusive impact on nearby co-channel license-exempt operations that use a cellular architecture. Moreover, raising the power limits in the license-exempt bands should never expose licensed services to an increased risk of interference due to out-of-band emissions. As WCA has previously stressed, the Commission must ensure that any higher power operations in the license-exempt bands do not increase the absolute amount of out-of-band emissions from license-exempt operations into adjacent licensed spectrum. More specifically, where Part 15 out-of-band emission limits are a function of in-band power, (*i.e.*, 20 dB below the in-band power level of the device), the Commission's rules must be modified to assure that out-of-band emissions are not increased above the current maximum permitted level even if license-exempt facilities are permitted to operate at higher power.<sup>22</sup>

WCA believes that the Commission should continue to explore and refine innovative licensing systems that speed broadband deployment by streamlining the application process. A good example of this was the highly streamlined application process proposed by WCA's Over

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<sup>21</sup> With respect to the 1.7/2.1 GHz AWS, the Commission has ruled that only Frequency Division Duplex ("FDD") technologies can be deployed, with mobile-to-base communications in the lower band and base-to-mobile communications in the upper band. *See Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands*, Report and Order, 18 FCC Rcd 25162, 25179 (2003). Thus, it has been able to adopt rather simplistic interference protection requirements. By contrast, with respect to the 2.5 GHz band, the Commission permits FDD upstream, FDD downstream, unpaired downstream or Time Division Duplex technologies to be used on any channel. *See 2.5 GHz R&O and FNPRM*, 19 FCC Rcd at 14216-17. As a result of the increased technical flexibility afforded licensees in the 2.5 GHz band, more complex interference protection rules are required to assure that licensees can guarantee subscribers the quality of service they demand. *See supra* note 11 *citing* WCA's pleadings filed in WT Docket No. 03-66.

<sup>22</sup> *See* Comments of Wireless Communications Ass'n Int'l, ET Docket No. 03-108, at 17 (filed May 3, 2004).

60 GHz Committee for a highly streamlined application process specific to wireless broadband providers that utilize “pencil beam” wireless links in the 70/80/90 GHz bands. That proposal, which the Commission adopted largely intact, permits licensees to obtain a nationwide license for all of the spectrum and then register individual links with third party frequency coordinators (provided that such links are pre-coordinated to avoid interference to previously registered links with “first in time” rights), thus giving licensees the benefit of interference protection without excessive application processing delays.<sup>23</sup>

More recently, in its *Report and Order* in ET Docket No. 04-151, the Commission adopted a modified nationwide licensing/base station registration system for the 3650-3700 MHz band.<sup>24</sup> However, it appears that the Commission’s modified approach may have at least one potentially serious flaw that could deter aggressive deployment of wireless broadband service at 3650-3700 MHz. Recognizing that operations by multiple operators in a given area could result in interference among fixed and base stations, the Commission sought to mitigate the risk through a prior coordination requirement. Specifically, the text of newly-adopted Section 90.1319(c) of the Commission’s rules provides that:

All applicants and licensees shall cooperate in the selection and use of frequencies in the 3650-3700 MHz band in order to minimize the potential for interference and make the most effective use of the authorized facilities. A database identifying the locations of registered stations will be available at <<http://wireless.fcc.gov/uls>>. *Licensees should examine this database before seeking station authorization, and make every effort to ensure that their fixed and base stations operate at a location, and with technical parameters, that will minimize the potential to cause and receive interference.* Licensees of stations

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<sup>23</sup> See *Allocations and Service Bands for the 71-76 GHz, 81-86 GHz and 92-95 GHz Bands*, Report and Order, 18 FCC Rcd 23318, 23338-42 (2003); *Allocations and Service Bands for the 71-76 GHz, 81-86 GHz and 92-95 GHz Bands*, WT Docket 02-146, Memorandum Opinion and Order, FCC 05-45 (rel. Mar. 3, 2005).

<sup>24</sup> See *Wireless Operations in the 3650-3700 MHz Band*, ET Docket No. 04-151 *et al.*, Report and Order and Memorandum Opinion and Order, FCC 05-56 (rel. Mar. 16, 2005) [“3650-3700 MHz Report and Order”].

suffering or causing harmful interference are expected to cooperate and resolve this problem by mutually satisfactory arrangements.<sup>25</sup>

Unfortunately, the interference-mitigation impact of this rule is difficult to square with statements in the *Report and Order* suggesting that the Commission did not intend to afford base station registrants at 3650-3700 MHz any “first in time” rights to interference protection.<sup>26</sup> Thus, the *Report and Order* begs a series of rather fundamental questions. For instance, does an existing system operator in the 3650-3700 MHz band have a right of action against a newcomer that causes interference, if the newcomer did not make “every effort” to prevent interference before registering its new base station? Is the “every effort” language to be read literally, or does the Commission really intend to apply some less protective standard (*e.g.* commercially reasonable efforts, reasonable efforts, good faith efforts, etc.), or no standard whatsoever (*e.g.* all terrestrial users are on equal footing)? Is the newcomer barred from the market if it cannot assure non-interference? Exactly what must prior operators in the market do to accommodate the incumbent’s efforts at mitigating interference? The Commission ultimately must answer these questions (among others) if wireless broadband is to have any chance of meaningful success in the 3650-3700 MHz – preferably, the Commission should resolve the issues on reconsideration of the *Report and Order*, providing prospective operators in the 3650-3700 MHz band with the regulatory certainty they need before deploying base stations in close proximity to one another.

Finally, the benefits of regulatory certainty most clearly have not been provided to Broadband Radio Service (“BRS”) Channel 1 and 2 licensees who are being displaced from the 2150-2162 MHz band to create auctionable spectrum for AWS licensees at 2110-2155 MHz. It has now been four years since the Commission first suggested in that it might forcibly relocate

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<sup>25</sup> *Id.* at Appendix A, Section 90.1319(c) (emphasis added).

<sup>26</sup> *See, e.g., id.* at ¶ 31 (stating that “[a]ll wireless licensees in the 3650 MHz band will have equal rights to the use of this spectrum (*i.e.*, no priority for first-in users), but all these licensees will have a mutual obligation to cooperate and avoid harmful interference to each another.”).

BRS licensees out of the 2150-2162 MHz band.<sup>27</sup> Yet, notwithstanding three formal rounds of comment and significant *ex parte* input, to this day all MDS/BRS licensees at 2150-2162 MHz know is that at some point they will be moved to spectrum within the reconfigured 2.5 GHz band – *the Commission has yet to adopt the procedures, reimbursement rules and timeframes that will govern relocation of BRS Channel 1 and 2 licensees from the 2150-2162 MHz band.*<sup>28</sup> Moreover, the Commission has yet to address the fact that the relocation spectrum at 2496-2500 MHz is polluted by other users that retain primary allocation, including the Big LEO Mobile Satellite Service, Industrial, Scientific and Medical users, and Broadcast Auxiliary Service licensees.<sup>29</sup>

Simply put, there is no sound reason for the Commission to perpetuate the regulatory uncertainty surrounding the relocation of BRS Channel 1 and 2 licensees. The record before the Commission establishes that the Commission has all the information it needs to adopt rules and policies that will govern the involuntary relocation of those licensees into their new spectrum in the reconfigured 2.5 GHz band.<sup>30</sup> Equally important, however, the Commission must not forget

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<sup>27</sup> See *Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 MHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, Including Third Generation Wireless Spectrum*, Notice of Proposed Rulemaking and Order, 16 FCC Rcd 596, 622 (2001).

<sup>28</sup> See *Review of the Spectrum Sharing Plan Among Non-Geostationary Satellite Orbit Mobile Satellite Service Systems in the 1.6/2.4 GHz Bands and Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Service to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems*, Report and Order and Fourth Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 13356, 13388 (2004); *2.5 GHz R&O and FNPRM*, 19 FCC Rcd at 14177.

<sup>29</sup> See, e.g., *Petition of Wireless Communications Ass'n Int'l for Reconsideration*, IB Docket No. 02-364 *et al.* (filed Sept. 8, 2004); *Consolidated Opposition of Wireless Communications Ass'n Int'l to Petition for Reconsideration*, IB Docket No. 02-364 *et al.* (filed Oct. 27, 2004); *Reply of Wireless Communications Ass'n Int'l to Consolidated Opposition to Petitions for Reconsideration*, IB Docket No. 02-364 *et al.* (filed Nov. 8, 2004); *Surreply of Wireless Communications Ass'n Int'l*, IB Docket No. 02-364 *et al.* (filed Dec. 17, 2004).

<sup>30</sup> See, e.g. *Ex Parte* Letter from Thomas Knippen, Vice President and General Manager, W.A.T.C.H. TV Company, to Chairman Michael K. Powell, WT Docket No. 03-66, at 1-4 (filed June 1, 2004); *Ex Parte*

that relocation of BRS licensees to any new spectrum will present novel relocation and compensation issues, as it will be the first time the Commission has forced the migration of a mass market, consumer-based subscription service to new spectrum, the first time the Commission has relocated a service where the spectrum is frequently leased to non-licensee system operators who provide service to the public, and the first time that licensees have been relocated to spectrum with greater risk of interference. These considerations are not accounted for in the Commission's historical microwave relocation policies (which were developed to address point-to-point microwave relocation), and thus the Commission must not blindly adhere to those policies simply because it is expedient to do so. Again, WCA and others have supplied the Commission a substantial and essentially unopposed record on this issues, offering a litany of proposals for modifying those relocation policies as necessary to address the unique issues presented by moving BRS Channel 1 and 2 licensees to new spectrum, and to ensure those licensees are truly made whole for the costs and other burdens of relocation.<sup>31</sup> The Commission can and should implement WCA's proposals now.

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Letter from Paul J. Sinderbrand, Esq., Counsel for Wireless Communications Ass'n Int'l, WT Docket No. 03-66 (filed June 3, 2004).

<sup>31</sup> *See, e.g.*, Comments of Wireless Communications Ass'n Int'l, ET Docket No. 00-258, at 28-44 (filed Apr. 14, 2003); Comments of Wireless Communications Ass'n Int'l, ET Docket No. 00-258, at 48-53 (filed Feb. 22, 2001); Comments of Sprint Corp., ET Docket No. 00-258, at 26-28 (filed Feb. 22, 2001).

**III. CONCLUSION.**

In sum, WCA believes that the WBATF has done an exceptional job in identifying the multitude of opportunities for widespread broadband deployment via wireless technology. Likewise, the WBATF's recommendations identify the most relevant legal and policy issues that must be resolved if wireless broadband service is to reach its full potential. WCA looks forward to working cooperatively with the Commission and its staff to ensure that the WBATF's objectives are achieved in full.

Respectfully submitted,

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