

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

**Supplement to Petition for Reconsideration of The ITFS/2.5 GHz Mobile
Wireless Engineering & Development Alliance, Inc. ("IMWED")**

Since the completion of the petition for reconsideration pleading cycle in the above-caption proceeding, IMWED learned of the attached transfer

application for EBS station WAU-27, Milwaukee.¹ By this application, WAU-27's then-licensee, Milwaukee Regional Medical Instructional TV Station, Inc., sought Commission approval to transfer the subject EBS license to the Clarendon Foundation ("Clarendon"). This application---filed only three days prior to the effective date of the EBS BRS Report and Order²---contains as Exhibit 5 a Long Form De Facto Transfer Lease Agreement between the Clarendon Foundation and PCTV Gold, Inc., a wholly-owned subsidiary of Sprint ("Sprint Agreement").

Here are some salient features of the Sprint Agreement.

Infinite Term. Assuming that Sprint desires, and FCC Rules do not bar the practice, the Sprint Agreement provides that the lessee may control the excess capacity of WAU-27 forever.³

Purchase Option. Under the Sprint Agreement, Sprint has the right to purchase WAU-29 for an undisclosed sum, should FCC Rules permit.⁴

¹ This application was filed on January 7, 2005 and designated by Commission file number 20050107AAA. The Commission approved this application, and on April 13, 2005, the parties filed a notification that the transfer had been consummated.

² *Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands*, Report and Order and Further Notice of Proposed Rulemaking, FCC 04-135 (rel. July 29, 2004), 19 FCC Rcd 14165 (2004).

³ See Section 2 of the Sprint Agreement at p. 3. Pursuant to Section 2, Sprint is entitled to an initial term of five years, plus two five-year renewal terms ("each a 'Renewal Term'"). In addition to these rights, Sprint is entitled to: "such number of additional terms of five years each as the FCC permits at the expiration of the Second Renewal Term or any Extension Term..." An Extension Term is defined in Section 2 as a term beyond the two Renewal Terms.

⁴ See Section 14.M, at pp. 26-27.

Lowest Permitted Educational Use. The Sprint Agreement specifies that Clarendon's educational use of WAU-27's capacity will be the minimum allowed under current Commission Rules.⁵

Confidentiality. Though disclosure of the Sprint Agreement to the Commission was required as part of a Form 330 transfer application, the parties agreed that they would not publicize any aspect of the document without written consent of the other, "which may be granted or withheld at the other Party's discretion."⁶ Had Sprint and Clarendon waited only four more days to file this transfer application, they could have submitted it on FCC Form 603, and they would not have been required to disclose the contents of the Sprint Agreement to the Commission.

Discussion

In its Consolidated Reply to Oppositions to Petitions for Reconsideration ("IMWED Consolidated Reply") in the above-captioned proceeding, IMWED documented that a 15-year limit applies to the term of EBS leases.⁷ The Sprint Agreement illustrates why this limit is essential; if allowed, commercial entities will obtain the right to control EBS spectrum *permanently*. In light of the fact that the Commission has decided to bar the sale of EBS systems to for-profit entities,⁸ allowing an equivalent outcome through leasing would be unconscionable.

⁵ See Section 5.A.1, at p. 5.

⁶ See paragraph 14.S at p. 29.

⁷ See IMWED Consolidated Reply to Oppositions to Petitions to Deny, pp. 6-7.

⁸ EBS/BRS Report and Order, paragraph 152.

As we noted in the IMWED Consolidated Reply, the very reason that the Commission established a lease term limit is that it found that EBS licensees need the option to respond to changing educational needs.⁹ The Sprint Agreement is the antithesis of this doctrine, in that it seeks to lock Clarendon into the current minimum educational service level for as long as Sprint desires---potentially forever.

In its Petition for Reconsideration in the above-captioned proceeding, IMWED submitted evidence that commercial operators are seeking purchase options in EBS lease agreements,¹⁰ and argued that commercial entities should be barred from obtaining the right to purchase EBS spectrum.¹¹ The Sprint Agreement corroborates IMWED's contention concerning this practice.

Finally, in its Petition for Reconsideration, IMWED argued that the Commission should continue to require the filing of unexpurgated copies of EBS leases---a practice that was discontinued once the EBS/BRS Report and Order took effect.¹² We argued that it is essential for the Commission---and for the public---to be able to monitor trends in EBS leasing, as they implicate the public interest. The Sprint Agreement exemplifies why transparency in

⁹ See IMWED Consolidated Reply to Oppositions to Petitions to Deny, p. 5.

¹⁰ See the December 10, 2004 declaration of Kevin-John Lindsay appended to IMWED's Petition for Reconsideration.

¹¹ IMWED Petition for Reconsideration, p. 10. "IMWED believes that it is clearly inappropriate for commercial entities to be lining up EBS purchase deals at the same time that the Commission has barred the commercial purchase of EBS spectrum. Indeed, to permit commercial entities to obtain purchase rights ensures that the eligibility question can never be resolved, in that it creates a lasting incentive to subvert the Commission's policy. Accordingly, IMWED asks the Commission, on reconsideration, to ban this practice."

¹² *Id.*, p. 10.

leasing is required. As noted, had it been filed only four days later, its contents would have gone undisclosed.

Respectfully submitted,

THE ITFS/2.5 GHz MOBILE WIRELESS
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By: /s/_____

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Dated: June 20, 2005

Certificate of Service

I, Chris Artem, hereby certify that copies of the foregoing Supplement to Petition for Reconsideration has been served by first class mail this 20th day of June, 2005 on the following:

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