

July 26, 2005

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 Twelfth Street, SW  
Washington, DC 20554

*Re: Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services To Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems - ET Docket No. 00-258*

*Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands - WT Docket No. 02-353*

*Review of the Spectrum Sharing Plan Among Non-Geostationary Satellite Orbit Mobile Satellite Service Systems in the 1.6/2.4 GHz Bands - IB Docket No. 02-364*

*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*

*NOTICE OF ORAL EX PARTE COMMUNICATION*

Dear Ms. Dortch:

Pursuant to Section 1.1206(b)(2) of the Commission's Rules, I am writing to advise that Robert D. Primosch and the undersigned, representing the Wireless Communications Association International, Inc. ("WCA"), met yesterday with Scott Delacourt, Joel Taubenblatt, Martin Liebman, Peter Daronco, Blaise Scinto, Stephen Zak, and Peter Corea of the Wireless Telecommunications Bureau to discuss the pending proposals for relocation of licensees on Broadband Radio Service ("BRS") channels 1 and 2 from the 2150-2162 MHz band to the replacement spectrum designated for them in the new 2.5 GHz bandplan to create auctionable spectrum for Advanced Wireless Services ("AWS") in the 2110-2155 MHz band.

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At the outset, WCA emphasized that the 2150-2162 MHz band is currently used in 30 to 50 markets across the country, providing thousands of subscribers in urban and rural markets with wireless broadband service and, in some cases, multichannel video programming service. WCA reiterated its contention that the only way to resolve the BRS relocation issue once and for all is to ensure that BRS channel 1 and 2 licensees are moved from the 2150-2162 MHz band to their replacement spectrum *before* AWS spectrum is deployed. WCA highlighted record evidence demonstrating that BRS channel 1 and 2 licensees at 2150-2162 MHz cannot co-exist with AWS licensees in the same or adjacent spectrum. In particular, WCA pointed to prior demonstrations that upstream data operations on BRS channels 1 and 2 cannot co-exist with downstream AWS operations under the current AWS spectral mask (43+10 log(P)). WCA stressed the evidence in ET Docket No. 00-258, as well as that involving the 2 GHz Mobile Satellite Service Advanced Terrestrial Component, establishing peradventure that upstream usage next to downstream usage is a recipe for disaster absent a spectral mask far more restrictive than that imposed on AWS. WCA noted that in the case of BRS/AWS the zones of interference to BRS could be quite large in markets where, as is usually the case, upstream BRS operations are part of a system that utilizes a single “supercell” (*i.e.*, a receive antenna system mounted higher in the air than those used in more cellularized systems) that has an extensive coverage area. WCA also pointed out that BRS channels 1 and 2 are almost always used together and therefore as a practical matter must be moved together, both to avoid undue disruption of existing BRS operations and to eliminate the possibility of adjacent interference between BRS channel 2 and AWS were only BRS channel 1 moved.

In addition, referring to its prior filings in ET Docket No. 00-258 and IB Docket No. 02-364, WCA recommended that AWS auction winners be responsible for the costs of moving BRS channel 1 and 2 licensees to their new spectrum. While WCA recognized that identification of precisely which AWS auction winners will be responsible depends on finalization of the Commission’s AWS bandplan in WT Docket No. 02-353, it emphasized that it is indifferent as to which AWS licensees are finally held responsible so long as the Commission makes it absolutely clear that AWS licensees must bear responsibility for all BRS relocation costs. Those costs, as WCA pointed out, necessarily include any expenditures necessary to clear the 2496-2500 MHz band of incumbent users with whom BRS channel 1 and 2 licensees cannot co-exist, including but not limited to grandfathered co-channel Broadcast Auxiliary Service (“BAS”) licensees (such costs should be shared by Globalstar because its deployment of an Ancillary Terrestrial Component benefits from clearance of BAS). WCA also noted its prior technical studies showing that BRS channel 1 operations cannot co-exist with Globalstar’s co-channel MSS operations at 2496-2500 MHz, and that this interference threat must be eliminated before BRS channel 1 licensees are moved there. Further, WCA reiterated that the Commission must address the threat of future interference to relocated BRS channel 1 licensees from Industrial, Scientific and Medical (“ISM”) devices which under the Commission’s current rules may operate with unlimited in-band power in the 2400-2500 MHz band.

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WCA also discussed why the Commission's rules and procedures for point-to-point microwave services are a useful starting point here, but ultimately must be modified to accommodate the unique circumstances associated with relocating BRS. WCA stressed that in all cases relocated BRS operations must be afforded comparable facilities. However, it was emphasized that BRS is a point-to-multipoint, mass-market, consumer-based service, a fact which implicates additional cost factors that do not exist in the point-to-point model. Moreover, unlike the case with previously relocated point-to-point services, BRS spectrum is frequently leased to non-licensee system operators who provide service to the public. Accordingly, the legitimate interests of BRS spectrum lessees must be accounted for and addressed in any relocation paradigm for BRS channels 1 and 2.

Lastly, WCA emphasized that BRS relocation is unique because the specific replacement spectrum designated for it at 2496-2502 MHz/2618-2624 MHz will not be available where a BRS channel 1 or 2 licensee's market has not yet been transitioned to the new 2.5 GHz bandplan under the transition procedures adopted in the Commission's *Report and Order* and currently subject to reconsideration in ET Docket No. 03-66. WCA reiterated that once a market has been transitioned, the responsible AWS licensee should be required to reimburse the "Proponent" for the *pro rata* share of the Proponent's transition costs attributable to making the 2496-2502 MHz/2618-2624 MHz bands available for BRS channels 1 and 2. WCA suggested that where the responsible AWS licensee wishes to clear BRS channels 1 and 2 from 2150-2162 MHz ahead of a transition, the Commission should permit the AWS licensee and the relocated BRS licensee(s) to negotiate alternative interim arrangements pending transition of the channels to the new 2.5 GHz bandplan.<sup>1</sup> As in the point-to-point context, WCA emphasized that the Commission should also afford relocated BRS licensees a self-help option under which they could undertake any band-clearing and/or transition procedures on their own, subject to later reimbursement by the responsible AWS licensee. This self-help mechanism would promote expedited clearance of BRS from the 2150-2162 MHz band where, as will undoubtedly be the case in some markets, BRS channel 1 and 2 users would prefer to eliminate any further uncertainty about relocation by completing the process sooner than later.

WCA concluded by urging the Commission to issue its BRS relocation rules and procedures as soon as possible. It stressed that for the past four years BRS licensees have remained under a cloud of regulatory uncertainty as to how, when and under what circumstances

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<sup>1</sup> For example, consistent with prior proposals by W.A.T.C.H. TV and WCA in WT Docket No. 03-66, the parties might agree that pending a full transition the affected BRS channel 1 licensee would be moved to the 2496-2500 MHz band (*i.e.*, the spectrum outside the current 2.5 GHz band that was reallocated for fixed and mobile terrestrial use in IB Docket No. 02-364), and the affected BRS channel 2 licensee would be relocated to the 2686-2690 MHz band, which is allocated to the underutilized I channels under the "old" 2.5 GHz bandplan. Then, after transition, the licensee could be relocated a second time to its designated spectrum under the new bandplan. This two-step approach could be implemented at little marginal cost, given that frequency-agile equipment could be installed as part of the first relocation and then readily retuned to operate under the new bandplan.

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they will be moved out of their current spectrum. Not surprisingly, that uncertainty has chilled investment and delayed deployment of new BRS service.

Equally important, WCA stated that expedited Commission action is essential to eliminate uncertainty for potential AWS licensees who intend to participate in the Commission's AWS auction, which is tentatively scheduled for June 2006. Until the Commission adopts rules and procedures clearly establishing who will be responsible (financially and otherwise) for relocating BRS channel 1 and 2 licensees out of the 2150-2162 MHz band, AWS auction bidders will be unable to factor BRS relocation costs into their valuation of the spectrum they are bidding on, creating precisely the sort of uncertainty and inefficiency that the Commission's auction process is supposed to avoid. Furthermore, delaying resolution of the relocation issue until after auction participants have bid on and paid for their spectrum will inevitably ensnare the Commission in legal disputes with AWS and BRS licensees, a scenario that could delay deployment of new AWS and BRS services indefinitely. WCA suggested that the more sensible approach for all concerned is to complete the BRS relocation rules ahead of the auction, and require that BRS channel 1 and 2 licensees be relocated prior to any deployment.

WCA noted that there does not appear to be any justification for further delay – the Commission has already asked for and received comment on the BRS relocation issue three times in ET Docket No. 00-258, and the resulting record establishes that the Commission has the information it needs to adopt rules and policies for moving BRS channel 1 and 2 licensees into their new spectrum in the reconfigured 2.5 GHz band. To the extent the Commission deems additional information necessary, WCA suggested that the Commission issue a *Public Notice* soliciting a refreshing of the record, rather than lose the time required to issue yet another *Notice of Proposed Rulemaking*.

Should you have any questions regarding this matter, please contact the undersigned.

Respectfully submitted,

/s/ Paul J. Sinderbrand

Paul J. Sinderbrand

Counsel for the Wireless Communications  
Association International, Inc.

cc: Scott Delacourt

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Joel Taubenblatt

Martin Liebman

Peter Daronco

Blaise Scinto

Stephen Zak

Peter Corea