

August 5, 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 yesterday I met on behalf of the Wireless Communications Association International, Inc. ("WCA") with Bruce Franca, Ira Keltz, Geraldine Matise, Jamison Prime, and Priya Shrinivasan of the Office of Engineering and Technology to discuss the 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.

During the course of that meeting, WCA emphasized that the 2150-2162 MHz band is currently used in 30 to 50 markets across the country, providing tens of thousands of subscribers

Marlene H. Dortch

August 5, 2005

Page 2

in urban and rural markets with wireless broadband service and, in some cases, multichannel video programming service. WCA reiterated its contention that the best way to assure that these BRS services are not adversely impacted by the reallocation of the band for AWS is to ensure that BRS channel 1 and 2 licensees are moved from the 2150-2162 MHz band to their replacement spectrum *before* AWS services are deployed. WCA reiterated its long-standing position that AWS auction winners be responsible for the costs of moving BRS channel 1 and 2 licensees to their new spectrum.

Those costs, as WCA has previously pointed out, necessarily include any expenditures required to clear the 2496-2500 MHz band of incumbent users with whom BRS channel 1 licensees cannot co-exist. With regard to grandfathered co-channel Broadcast Auxiliary Service (“BAS”) channel A-10 licensees, WCA noted the agreement among all participants in the proceeding that BAS and BRS cannot co-exist, and suggested that the costs of BAS channel A-10 relocation both could be shared between AWS and Globalstar (because Globalstar’s deployment of an Ancillary Terrestrial Component benefits from clearance of BAS) and could be reduced by coordination of the BAS 2.4 GHz rebanding with the 2 GHz rebanding being undertaken by Nextel. WCA also reiterated that BRS channel 1 operations cannot co-exist with Globalstar’s co-channel MSS operations at 2496-2500 MHz and that Globalstar’s proposal to limit BRS relocation to the just 35 markets was fundamentally unworkable given that BRS channel 1 is licensed across virtually all of the country. 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. WCA noted that the refusal of the ISM community to cooperate with efforts to craft rules to govern sharing is significantly hindering efforts to identify mutually beneficial solutions.

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, WCA stressed that the legitimate interests of BRS spectrum lessees must be accounted for and addressed in any relocation paradigm for BRS channels 1 and 2.

WCA also noted 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

Marlene H. Dortch

August 5, 2005

Page 3

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. Consistent with prior proposals by W.A.T.C.H. TV and WCA in WT Docket No. 03-66, WCA suggested that pending a full transition the affected BRS channel 1 licensee could 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 could 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. WCA noted that in most cases, 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.

WCA also urged 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 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.

Marlene H. Dortch  
August 5, 2005  
Page 4

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

Respectfully submitted,

*/s/ Paul J. Sinderbrand*

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Association International, Inc.

cc: Bruce Franca  
Ira Keltz  
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