

September 26, 2005

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

Re: 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

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 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

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 on September 23, 2005, I met separately on behalf of the Wireless Communications Association International, Inc. ("WCA") with John Branscome, acting Legal Advisor to Commissioner Abernathy, and with Barry Ohlson, Senior Legal Advisor to Commissioner Adelstein. The purpose of the meetings was to discuss the pending proceedings involving the rules governing the Broadband Radio Service ("BRS") and the Educational Broadband Service ("EBS"), including the proceedings addressing the eventual relocation of licensees on 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 in the 2110-2155 MHz band. The attached outline provides WCA's perspective on the key issues before the

Marlene H. Dortch
September 26, 2005
Page 2

Commission, was distributed to Messrs. Branscome and Ohlson at the meetings, and sets forth the positions expressed by WCA in the meetings.

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.

Attachment

cc: John Branscome
Barry Ohlson

WCA's PERSPECTIVE ON KEY ISSUES
RECONSIDERATION OF *REPORT AND ORDER*
WT DOCKET NO. 03-66

TRANSITION ISSUES

- BTAs, rather than MEAs, should be used to guide transitions.
- Initiation Plan filing deadline should be extended to 30 months from effective date of new rules.
- MVPDs that were using more than 7 channels for the distribution of digitized programming as of 10/7/02 and that continue to do so at the time of a transition should be permitted to opt-out of the transition as of right. Analog system operators should be permitted to seek a waiver.
- An alternative bandplan designating 2496-2500 MHz for relocating BRS Channel 1 and 2686-2690 MHz for relocation of BRS Channel 2 is necessary for opt-out markets.
- The first to file Initiation Plan should be the Proponent, who can then add Co-Proponents at its discretion.
- If a licensee does not respond to a Pre-Transition Data Request within 21 days, the Proponent should be permitted to proceed without providing it with new downconverters, without transitioning video programming to MBS and without affording interference protection at its receive sites.
- To expedite transitions and eliminate disputes, the Commission should adopt Safe Harbors #3 (Proponent can digitize or provide multiple MBS analog channels), #4 (addressing allocation of channels where two EBS licensees currently share a channel group) and #9 (dealing with point-to-point EBS stations) as proposed by WCA/NIA/CTN.
- If Commission retains rule requiring D/U ratios to be met during the transition, it should clarify that adjacent channel D/U benchmark is -10 dB and that Proponents can upgrade EBS receive sites to satisfy requirement as was permitted under prior rules.

REIMBURSEMENT OF PROPONENT'S TRANSITION EXPENSES

- Reimbursement obligation should only attach once spectrum is used to provide commercial service.
- EBS and BRS licensees should be subject to reimbursement if they provide commercial service.
- Costs should be pooled for entire market area, rather than allocated on a channel-by-channel basis.
- Sharing should be based on MHz Pops, using MHz post transition and 2000 US census pop counts.

TECHNICAL ISSUES

- The Commission should not return to the former broadcasting-based D/U interference protection model. Experience over the past 9 months shows that the new rules work – no interference has been reported by any EBS licensee.
- The Commission should clarify that the requirement of a 47 dB μ V/m maximum signal strength at a licensee's GSA boundary is measured over 5.5 MHz and that operations over different sized channels is to be adjusted by applying a factor of $10 \log [(actual\ bandwidth\ in\ MHz)/(5.5\ MHz)]$.
- A licensee should be required to meet the more stringent dual spectral mask for base stations ($67 + 10 \log (P)$ measured 3 MHz and beyond inside the frequency block of the requesting licensee) upon request of any licensee with an overlapping GSA that uses a non-synchronized technology without awaiting the resolution of a document. Interference in this case is inevitable, and there is no need to wait for it to occur.
- The limit on out-of-band emissions for customer equipment must be revised so that the limit adopted for mobile digital stations also applies to fixed digital stations. However, special rules are required for certain fixed customer units that utilize outdoor antennas.
- The out-of-band emissions limits applicable to the MSS/BRS boundary must be revised to take into consideration the 1 MHz guardband at 2495-2496 MHz and to eliminate erroneous reference to documented interference complaints.
- Violations of the height-benchmarking rule should be cured immediately, without delay while awaiting action by a clearinghouse or otherwise.

OTHER ISSUES

- The Commission should continue to rely on the *Secondary Market* rules to govern BRS/EBS leasing.
 - No need established for filing of EBS leases, which would expose competitively sensitive information.

WCA's PERSPECTIVE ON KEY ISSUES
SECOND REPORT AND ORDER ADDRESSING FNRPM
WT DOCKET NO. 03-66

SUBSTANTIAL SERVICE

- Part 27 “Substantial Service” test of Section 27.14 (“sound, favorable and substantially above the level of mediocre service which just might minimally warrant renewal”) should apply to assure regulatory parity with AWS and WCS.
- Traditional Part 27 safe harbors should apply (4 links per million for point-to-point and 20% population coverage for point-to-multipoint).
- Recently-adopted rural safe harbors should apply (at least one end of a permanent link in at least 20% of the “rural areas” within its licensed area if fixed, coverage of at least 75% of the geographic area of at least 20% of the “rural areas” within its service area if mobile)
- To accommodate operators’ needs to cobble together spectrum from multiple sources, devote spectrum for guardband and accommodate anticipated growth in bandwidth needs, new safe harbor should provide that where a licensee demonstrates that its spectrum is licensed to or leased by the operator of a multichannel system comprising spectrum licensed under multiple call signs, that licensee should be deemed to have provided substantial service if the multichannel system, taken as a whole, satisfies the substantial service test.
- To avoid retention of obsolete facilities, substantial service should be found where the licensee demonstrates that it met a safe harbor at any time during the license term, as opposed to just at renewal time
- A BRS/EBS licensee should be required to demonstrate substantial service at license renewal, but no earlier than five years after its transition to the new bandplan has been completed. This acknowledges importance of transition to the deployment of new services and the inability of a licensee to fully control the transition process, while at the same time providing a fair opportunity for services to be deployed.

AUCTION ISSUES

- Before any spectrum is seized and re-auctioned, licensees should have a *limited* opportunity to self-transition. Self-transition option should only be available after the deadline for filing Initiation Plans, as earlier self-transitions will complicate Proponent-driven transition process.
- MVPDs should have the option of returning LBS/UBS licenses for re-auction in exchange for auction winner funding digitization of continued video operations in MBS.

LICENSING IN THE GULF OF MEXICO

- If the Commission adopts licensing rules for Gulf of Mexico despite lack of *any* interest from commenting parties, it must adopt WCA/NIA/CTN rules for assuring that Gulf operations do not interfere with land-based use along Gulf of Mexico.

WCA's PERSPECTIVE ON KEY ISSUES
ORDER ON RECONSIDERATION
IB DOCKET NO. 02-364

The *Report and Order* in IB Docket No. 02-364 reallocated the 2496-2500 MHz band for use by BRS Channel 1 licensees upon relocation from 2150-2156 MHz to clear that spectrum for the upcoming Advanced Wireless Service auction. However, the band is highly encumbered, and as a result AWS F Block auction winners will find it difficult to relocate BRS Channel 1 licensees there unless the following actions are taken on reconsideration.

- Adopt the SBE proposal for digitizing and relocating BAS channel A10 to spectrum below 2483.5 MHz.
 - WCA and SBE agree that BRS and BAS cannot coexist at 2495-2500 MHz.
 - Relocation of BAS also is necessary to accommodate Globalstar ATC.
 - Costs should be shared between Globalstar and AWS F Block auction winner.

- Eliminate the co-primary allocation to Big LEO MSS.
 - WCA and Globalstar, the sole licensee of the 2.4 GHz band MSS spectrum, agree that cochannel, co-coverage sharing is not possible.
 - Globalstar proposal to limit BRS 1 use to Top 35 MSAs and to impose stringent technical requirements on use makes the band unusable for relocating BRS channel 1, which is licensed across virtually the entire country pursuant to auction and secondary market purchases.
 - 2483.5-2500 MHz band was intended for use by multiple Big LEO MSS applicants, and Globalstar has long been on notice that FCC might reclaim spectrum if there were only one remaining licensee in the 2.4 GHz MSS allocation.

- Impose a reasonable limit on the power of ISM devices within the 2496-2500 MHz band
 - Lack of any power ISM power limit makes cochannel sharing dangerous.
 - WCA has proposed use of Part 18 limits that current apply above 2500 MHz.
 - WCA proposal only applies to devices manufactured or imported 2 years after new rules.
 - NTIA study demonstrates that microwave oven vendors can readily meet WCA's proposal.

WCA's PERSPECTIVE ON KEY ISSUES
FURTHER NOTICE OF PROPOSED RULEMAKING
Regarding Relocation of BRS Channels 1 and 2

- Record is clear that BRS (which is largely used for customer-to-base link in fixed broadband systems) cannot coexist with AWS (which must be used for base-to-customer transmissions in the 2.1 GHz band).
 - 30-50 systems currently use BRS Channels 1 and 2. Tens of thousands of subscribers depend on BRS 1/2, and many have no alternative access to broadband services provided over spectrum.
- *FNPRM* should make clear that costs associated with relocating operations on BRS channels 1 and 2 from 2150-2162 MHz will be borne by winners of applicable AWS licenses.
 - Rules to govern relocation process must be adopted prior to AWS auction so that bidders can develop bidding strategies that reflect costs associated with BRS 1/2 relocation.
- Relocation rules must acknowledge that many BRS channel 1 and 2 facilities are leased, and that system operator, as well as licensee, will incur costs that are subject to reimbursement.
- Relocation spectrum at 2496-2500 MHz for BRS channel 1 is currently encumbered by BAS channel A10. AWS auction winners must bear portion of costs incurred in digitizing BAS channel A10 and moving it below 2483.5 MHz.
- AWS auction winners should be obligated to reimburse 2.5 GHz band Proponent for *pro rata* share of costs of transitioning to new bandplan based on 12 MHz allocated to BRS 1 and 2.
- Relocation timing cannot be left entirely in the hands of AWS auction winners and thus self-help similar to that granted microwave licensees under *Emerging Technology* microwave relocation rules should be available to all BRS 1 and 2 licensees. Those who invoke self-help should be entitled to immediate reimbursement of costs necessary to deploy comparable facilities in 2.5 GHz band.
 - AWS auction winners may be competing against BRS licensees, and thus may have an incentive to keep BRS channels 1 and 2 at obsolete location.
 - FCC policy is to speed transition of BRS/EBS to new 2.5 GHz bandplan.
- BRS channels 1 and 2 are used in conjunction with one another and thus both must be relocated simultaneously to avoid multiple disruptions to subscribers and reduce costs.
- Where market has not yet transitioned to new 2.5 GHz bandplan or there is an MVPD opt-out, rules should permit relocation of BRS channels 1 and 2 to 2496-2500 MHz and 2686-2690 MHz on an interim basis.