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October 5, 2005

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Via Electronic Filing

Marlene H. Dortch  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, DC 20554

**Re: EX PARTE SUBMISSION**  
WT Docket 03-66; 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 GHz Bands

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Dear Ms. Dortch:

On October 3, 2005, Bradley Holmes, Chief Operating Officer of NY3G Partnership ("NY3G"), Darryl Delawder of Delawder Communications, Inc., and Bruce Jacobs, counsel for NY3G, met with Barry Ohlson, senior legal advisor to Commissioner Adelstein, regarding the above-referenced proceeding.

The parties discussed the recent press release issued by NY3G and ADAPTIX regarding the trial deployment of fixed and mobile broadband services in New York City. NY3G reiterated its position on the record that a "split-the-football" approach would not provide a viable solution in New York City because of the creation of an "exclusion zone" on both sides of the boundary between co-channel F group licensees, effectively denying service on those channels to over seven million people and hundreds of thousands of businesses located throughout Manhattan and in large portions of Brooklyn and Queens. The parties discussed the alternative solution of assigning the low-power channels to the MMDS licensee and the high-power channel to the grandfathered ITFS licensee.

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Pursuant to the discussions, attached as Exhibit 1 is a draft amendment to the Commission's EBS/BRS rules. Additionally, attached as Exhibit 2 is the handout distributed at the meeting.

Very truly yours,



Bruce D. Jacobs

Tony Lin

*Counsel for NY3G Partnership*

Attachments

cc: Barry Ohlson

## Exhibit 1

§27.1206 Geographic Service Area.

(a) The Geographic Service Area (GSA) is either:

(1) The area for incumbent site-based licensees that is bounded by a circle having a 35 mile radius and centered at the station's reference coordinates, which was the previous PSA entitled to incumbent licensees prior to January 10, 2005, and is bounded by the chord(s) drawn between intersection points of the licensee's previous 35 mile PSA and those of respective adjacent market, co-channel licensees, except if the overlap of the PSAs of incumbent site-based co-channel BRS and grandfathered EBS licensees operating on the E or F group channels would result in an exclusion zone containing [3] million or more people and more than [33]% of the total population of the combined GSAs of the co-channel licensees. (An exclusion zone is the area within 7.8 kilometers of the chord(s) drawn as described above in connection with any two co-channel licensees and within the PSAs of those two co-channel licensees.) In that case, any one of the two affected co-channel licensees may elect during the transition process (see §27.1232 (b),(c)) to divide the channel assignments so that the grandfathered EBS licensee is assigned the one high-powered channel and the BRS licensee is assigned the three low-powered channels. If such an election is made, the GSA for the affected licensees' assigned channel(s) will be the area bounded by that licensee's previous 35 mile PSA centered at the station's reference coordinates and by the chord(s) drawn between intersection points of the licensee's previous 35 mile PSA and those of any other adjacent market co-channel licensees that are operating on the same channels; or:

(2) The BTA that is licensed to the respective BRS BTA authorization holder subject to the exclusion of overlapping, co-channel incumbent GSAs as described in paragraph (a)(1) of this section.

(b) If the license for an incumbent BRS station cancels or is forfeited, the GSA area of the incumbent station shall dissolve and the right to operate in that area automatically reverts to the GSA licensee that held the corresponding BTA.

## Exhibit 2

In any case in which the application of the “split-the-football” approach to resolve mutual exclusivity between co-channel BRS and grandfathered EBS licensees operating on the E or F group channels would result in an exclusion zone affecting [3] million or more people and more than [33]% of the total population of the relevant GSAs, an affected co-channel licensee may elect instead to “split the frequencies,” in which case the grandfathered EBS licensee will be assigned the one high-powered channel and the BRS licensee will be assigned the three low-powered channels. The size of the exclusion zone is determined by calculating the area in which the operation of a device at 0.1 watts EIRP on the co-channel frequency would be predicted, based on a free space calculation, to exceed the 47 dBu signal strength limitation at the GSA border imposed under 47 C.F.R. § 27.55.