BRS Rural Advocacy Group
Central Texas Communications, Inc.

October 6, 2005

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 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
NOTICE OF EX PARTE PRESENTATION

Dear Ms. Dortch:

On behalf of the BRS Rural Advocacy Group (the "Group") and Central Texas Communications, Inc. ("CTC"), this is to provide notice that on October 5, 2005, Donald L. Herman, Jr., counsel to CTC, and the undersigned, counsel to the Group, met with Barry Ohlson, Senior Legal Advisor and Legal Advisor for Spectrum & International Issues to Commissioner Jonathan S. Adelstein, to discuss certain issues pending in the above-referenced proceeding. The issues discussed at the meeting are summarized on the attached outline, which was distributed by the Group and CTC at the meeting.

Pursuant to Section 1.1206(b)(2) of the Commission's Rules, this notice is being filed electronically.

Please contact the undersigned if there are any questions concerning this matter.

Respectfully submitted,

/s/ Stephen E. Coran

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cc: Barry Ohlson, FCC

Enclosure

BRS Rural Advocacy Group
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WT Docket No. 03-66

Proposal (as clarified)

The BRS Rural Advocacy Group and Central Texas Communications, Inc. are **rural** BRS/EBS operators providing MVPD service to sparsely-populated, underserved areas of the country. We have participated in this proceeding as independent advocates for a self-effectuating **transition "opt-out" process** that would allow certain rural BRS/EBS systems to preserve their existing operations in easily-defined circumstances. This proposal is clarified as follows:

(a) the center of its geographic service area ("GSA") (*i.e.*, the site of its main transmitter) is located in a county that is a defined "rural area" under FCC rules; *and*
(b) as of October 7, 2002 (i) it was part of system that provided MVPD and/or broadband service to more than 15 percent of the households within that "rural area;" *or* (ii) it was part of system composed of at least 20 collocated analog BRS/EBS channels that provided MVPD service to at least 500 customers (as few as 11 channels if the licensee can demonstrate that channels were not available because of the 1995 EBS filing "freeze"). Licensees collocated with a licensee meeting any of the above criteria also would be eligible to "opt out."

We also support the "opt-out" proposal advanced by the Coalition (*i.e.*, as of October 7, 2002, provision of MVPD service on more than seven digital channels or provision of service to at least five percent of the households in the licensee's GSA).

Benefits of Proposal

- recognizes that a narrowly-defined class of rural systems have achieved critical mass in customers, competitiveness and/or channels, and permits such systems to avoid draconian results such as channel loss, transition expense and shift in business objectives (from video to other services) if forced to transition
- adopts self-effectuating process that is easy to administer and relies on information that can be readily determined and verified without FCC involvement
- eliminates administrative burdens, delays, uncertainty and "line-drawing" associated with case-by-case consideration of waiver requests, and encourages cooperation between proponents and rural licensees during transition planning
- preserves low-cost competitive alternative to high-cost DBS video service, which often is the only other MVPD serving rural areas, and "greenfield" broadband service
- allows rural systems to engage in long-range business planning critical to their vitality and to maximize investment opportunities

Why the Waivers Process is Inadequate: Case Study

On April 29, 2005, W.A.T.C.H.TV Company filed a 12-page Request for Waiver of the transition rules, in accordance with the Commission's directive in the *Report and Order*. W.A.T.C.H. TV's arguments were identical to those raised in this proceeding and were not opposed. **In the five months since it was filed, Commission staff has taken no action on the waiver request** – not even a public notice soliciting comment. **This demonstrates that the fears cited by "opt-out" proponents have unfortunately come true – incurrence of legal fees to prepare a waiver request, administrative delays of undetermined length and uncertainty in the outcome.** Delay by the Commission staff further shows that the Commission's stated interest in entertaining waiver requests has been an empty promise.