

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of:)	
)	
Amendment of Part 2 of the Commission's)	ET Docket No. 00-258
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)	
)	

COMMENTS OF T-MOBILE USA, INC.

T-Mobile USA, Inc. (“T-Mobile”) respectfully submits these comments in response to the *Fifth Notice of Proposed Rulemaking* in ET Docket No. 00-258.¹ The *Fifth Notice* seeks comment on the specific relocation procedures applicable to both Broadband Radio Service (“BRS”) operations in the 2150-2160/62 MHz band and Microwave Fixed Service (“FS”) operations in the 2110-2150 MHz and 2160-2180 MHz bands. As a licensee in the 1.9 GHz broadband Personal Communications Service (“PCS”) bands, T-Mobile has significant operational experience in relocation and band clearing efforts. With knowledge gained from its extensive relocation experience, T-Mobile strongly supports the implementation of relocation procedures that will enhance the efficient transition of Advanced Wireless Services (“AWS”) licensees into the 2.1 GHz band. An efficient relocation process will cause less disruption to

¹ *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*, Eight Report and Order, Fifth Notice of Proposed Rulemaking and Order, FCC 05-172 (Sept. 29, 2005) (“*Eighth R&O*” or “*Fifth Notice*”).

operators, minimize the impact on licensees, and allow for the growth and development of important new wireless services for the American public.²

I. BASED ON PAST EXPERIENCE, THE FCC SHOULD REFINE ITS EXISTING RELOCATION PROCEDURES TO ACCELERATE AND IMPROVE THE RELOCATION PROCESS

As the Commission has recognized, the availability of the 2.1 GHz spectrum for AWS is critical to the nation's development of important new wireless technologies. For this spectrum to be rapidly available, the relocation of incumbents from the 2.1 GHz spectrum should take place as efficiently and expeditiously as possible. As such, T-Mobile strongly supports the Commission's proposal to follow the relocation procedures defined in the *Emerging Technologies* proceedings, including requiring cost-sharing among affected parties and the establishment of a clearinghouse to effectuate cost-sharing.³ T-Mobile's experiences in previous relocation proceedings⁴ have revealed, however, that some modifications are advisable to produce the most efficient relocation process. T-Mobile therefore strongly urges the Commission to maintain the basic relocation process it developed for 1.9 GHz relocation, but to refine certain procedures to increase efficiency. Additionally, to maintain the equity of the relocation process, the cost-sharing policies and procedures developed in this proceeding should

² See *Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies*, First Report and Order and Third Notice of Proposed Rule Making, 7 FCC 6886, ¶ 2 (1992); see also *Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies*, Third Report and Order and Memorandum Opinion and Order, 8 FCC 6589, ¶ 4 (1993).

³ *Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies*, First Report and Order and Third Notice of Proposed Rule Making, 7 FCC Rcd 6886 (1992); Second Report and Order, 8 FCC Rcd 6495 (1993); Third Report and Order and Memorandum Opinion and Order, 8 FCC Rcd 6589 (1993); Memorandum Opinion and Order, 9 FCC Rcd 1943 (1994); Second Memorandum Opinion and Order, 9 FCC Rcd 7797; *aff'd Association of Public Safety Communications Officials-International, Inc. v. FCC*, 76 F.3d 395 (D.C. Cir. 1996) (collectively, "*Emerging Technologies* proceeding"). The Commission has noted that "relocation procedures that are consistent can be expected to foster a more efficient rollout of AWS and minimize confusion among the parties, and thereby serve the public interest." *Fifth Notice* at ¶ 34, citing *AWS Third R&O and Third NPRM*, 18 FCC Rcd 2223 (2003).

⁴ In the 1.9 GHz band, T-Mobile, its predecessors, or its affiliates relocated 570 links, participated in 1580 cost-sharing obligations and 1295 reimbursements.

be extended to any future AWS licensees who benefit from the relocation of incumbents during the relocation of the 2.1 GHz spectrum.⁵

T-Mobile notes that the rapid and cost-efficient relocation that occurred in the 1.9 GHz band was, in large part, due to good faith and fair dealing by both incumbents and new entrants. In the 2.1 GHz band, however, T-Mobile cautions that the presence of competitors warrants special scrutiny by the Commission as these incumbents could delay the introduction of services by new entrants. The 2110-2130 MHz/2160-2180 MHz microwave band, for example, is home to a large number of backhaul networks owned by commercial mobile radio service (“CMRS”) operators, principally 800 MHz cellular radiotelephone incumbents. In addition, many of the authorizations for BRS channel 1, 2, and 2A in the 2150-2160/62 MHz band are held by CMRS operators. Therefore, in adopting specific policies and procedures for this relocation, the Commission should focus on the extent to which incumbents and relocating entities are competitors, and will thus require additional monitoring by the Commission. In order to keep this process in check, T-Mobile supports a CTIA proposal requiring BRS licensees to provide a good faith pre-auction cost estimate for relocation on a system-by-system basis, and capping post-auction relocation costs to 110 percent of that amount. This proposal will place all auction participants on a level playing field in terms of auction discounting for purposes of the F Block, and ensure relocation of the F Block incumbents will proceed without delay.

The Commission has recognized that the relocation procedures used in the 1.9 GHz relocation, with some modifications, have provided an efficient system for the relocation of existing incumbents. T-Mobile supports this approach, and suggests certain clarifications to the

⁵ In moving incumbent licensees from the 2110-2130 MHz spectrum, AWS licensees will often be required to move paired links in the 2160-2180 MHz spectrum. Later AWS licensees into this spectrum should be required to defray the costs incurred by earlier AWS licensees, because these later AWS licensees will benefit from the relocations effectuated by earlier AWS licensees.

current system, pursuant to the Commission's request for modifications to the existing relocation framework.⁶ As such, T-Mobile advocates revisions to the current relocation policy that will allow the Commission to work with relocating parties to create more efficient relocation negotiation procedures, modify the rules for filings with the clearinghouse to promote efficient resolution of cost sharing claims, provide further certainty to relocators regarding compensable costs, and provide additional clarification on when cost sharing is triggered by new entrants.

II. THE COMMISSION SHOULD APPLY THE 1.9 GHz RELOCATION RULES TO THE 2.1 GHz BAND WITH CERTAIN MODIFICATIONS

The relocation policies adopted by the Commission in the 1.9 GHz relocation proceeding provide a good framework that can be easily adapted to meet the need for an efficient system of relocation for the 2.1 GHz band. A cost sharing system is essential to both efficiency and equity when changing the use of an occupied band.⁷ With cost sharing policies from the 1.9 GHz relocation process as a starting point, the Commission should apply practical experience from the history of previous relocation negotiations to adapt these processes specifically for AWS.

A. In Partnership With Industry, the Commission Can Implement An Efficient Relocation Of Incumbents From The AWS Bands

As T-Mobile has previously observed, the clearing of the AWS band is critical to the successful deployment of spectrum for third generation wireless offerings. In an effort to speed the repurposing of the 2.1 GHz band, T-Mobile supports the Commission's proposal to forego the voluntary negotiation period, and commence relocations negotiations with a mandatory

⁶ See *Fifth Notice* at ¶ 11-12.

⁷ See *Fifth Notice* at ¶ 43. The Commission has previously found that the adoption of cost sharing rules in relocation procedures "serves the public interest because it (1) distributes relocation costs more equitably among the beneficiaries of the relocation; (2) encourages the simultaneous relocation of multi-link communications systems; and (3) accelerates the relocation process, promoting more rapid deployment of new services."

negotiation period.⁸ Based upon its experience in the 1.9 GHz relocations, the voluntary relocation period was wholly unnecessary to the efficient transfer of use. Creating a period where incumbents can simply refuse to negotiate is inconsistent with more recent allocation decisions, and unnecessary when some licensees have been on notice that they will be relocated for the last ten years.

T-Mobile further believes that the Commission could enhance the efficiency of the reallocation if it developed a procedure to issue expedited rule interpretations when inevitable cost-sharing and relocation disputes arise. For the same reason, the Commission should also adopt expedited procedures to refer and address disputes between relocating parties and cost sharing participants.⁹ T-Mobile's experience in relocating links and cost sharing in the 1.9 GHz band reveals that repetitive delays can result from differing interpretations of the Commission's rules and disputes between parties. Having expedited measures in place will put all parties on notice of the appropriate policy, correct the delays and difficulties that plagued previous relocation proceedings, and ensure that this relocation proceeds in an effective and efficient manner.

In such regards, T-Mobile believes several clarifications of certain triggering policies are warranted at the outset. Based on its experiences in the PCS bands, and particular repetitive issues that arose in that context, T-Mobile believes the Commission should definitively rule that a new entrant may trigger a cost-sharing obligation for a relocated link only once per license, regardless of the size of the license. In addition, the Commission should affirm that the presence of a new entrants' site within the proximity threshold box, regardless of the potential for actual interference, will trigger an obligation. That policy should also apply regardless of whether the

⁸ See *Fifth Notice* at ¶ 24.

⁹ The current rules for dispute resolution are found at 47 C.F.R. § 24.251.

site actually pre-dated the relocation, since the new entrant will still benefit from the relocation.

B. The Commission Should Modify The Rules For Link Registrations And Site Filings With The Clearinghouse To Promote Efficient Resolution Of Cost Sharing Claims

T-Mobile's experience with 1.9 GHz relocations is consistent with the FCC's conclusion that a clearinghouse is an effective means of efficiently sharing the financial impact of rebanding.¹⁰ However, the clearinghouse must have clear, unambiguous rules in order to maintain efficiency and equity. For example, T-Mobile supports a blanket rule that would require all entities constructing new sites or modifying existing sites to file site data with the clearinghouse. In the past, there were inconsistencies related to the filing of site data, because the requirement to file was premised on prior coordination notifications ("PCN"). Some licensees argued that, because they believed a site caused no specific interference, no coordination was required and therefore no filing with the clearinghouse was warranted. Implementing a blanket rule that requires all site registrants to file with the clearinghouse will solve any ambiguity and make the process more efficient. Additionally, carriers should be under a continuing obligation to maintain the accuracy of all data on file with the clearinghouse.

T-Mobile also believes that relocating entities should not be required to file link registrations within ten days.¹¹ Carriers have incentives under the rules to file as soon as possible, since depreciation runs from the time of relocation, not the time of filing, and delays in filing link registrations penalize the carrier by artificially creating depreciation. While T-Mobile agrees that the Commission should encourage timely filing, there is no reason to penalize carriers for failing to file within an arbitrary time period, such as ten days, especially when there is no

¹⁰ See *Microwave Cost Sharing Memorandum Opinion and Order on Reconsideration*, 15 FCC Rcd 13999, 14003 ¶ 8 (2000).

¹¹ See 47 C.F.R. § 24.245(a).

practical ability for a clearinghouse to issue a waiver for cause. For a carrier to lose all of the benefits of cost sharing because of an inability to file within ten days is a draconian and altogether unnecessary punishment.

The Commission should also clarify that a carrier's obligation to file documentation of costs is not intended to require the clearinghouse to maintain all documentary evidence related to costs in a relocation. The clearinghouse will be more efficient if carriers only provide uniform cost data, with supporting documentation given to subsequent triggers upon request. Licensees, and not the clearinghouse, should be responsible for maintaining documentation of cost issues that could later be subject to inquiry. Link registrants, therefore, should be required to maintain their documentation until the sunset date.

C. The Commission Should Provide Further Certainty To Relocating Entities Regarding Compensable Costs

The Commission can improve upon the relocation framework used in the 1.9 GHz relocation by making clear to all relocating entities what costs are compensable. For example, when licensees enter into relocation contracts, they should be certain that these contracts, where reasonable, cannot be challenged by later AWS licensees who are required to share the costs of relocation. Furthermore, the Commission should clarify specific terms and policies relating to compensable costs, which will allow the relocation of the 2.1 GHz spectrum to proceed more efficiently and equitably.

As an initial matter, the Commission should clarify that cash relocation payments are compensable costs for the purposes of cost sharing.¹² In the case of a cash payment—even in a situation where facilities are abandoned – the Commission should require cost sharing as long as

¹² The current rules for compensable costs are found at 47 C.F.R. § 24.243(b).

parties document, in good faith, the compensable costs with a good faith estimate of implementing a relocation to alternative frequencies. Second, the Commission should clarify that triggering entities are not entitled to “second guess” what a relocater should have paid, nor are relocating entities required to document, beyond a relocation contract, how the incumbent actually used relocation funds.¹³ If, for example, a relocater obtains a third party estimate of relocation costs, T-Mobile does not believe a subsequent trigger is acting in good faith in challenging those costs, absent, at a minimum, their own third party estimate of costs.

The Commission should also clarify how costs involving alternative facilities should be documented for the purposes of cost sharing. Clarification of compensable costs for alternative facilities will provide certainty, and encourage the use of alternative facilities in relocations. For example, if a microwave path is replaced by a landline facility with a monthly recurring charge, the Commission should provide guidance on how costs over the length of time of service should be considered in determining cost sharing benefits.

As a final matter, the Commission should clarify its rules regarding “cost averaging,” which is prohibited under the rules for 1.9 GHz cost sharing.¹⁴ While T-Mobile concurs with the Commission that costs should be accurate on a link by link and market by market basis where multiple paths are relocated, the rational allocation of certain costs on a link basis should not be considered to be prohibited cost averaging. For example, the proscription against cost averaging should not prohibit the division of test costs for assessing the network capability of five interconnected sites among four links in the network.

T-Mobile submits that the clarification of these issues will significantly decrease the number of—and delays caused by—disputes in cost sharing. Unfortunately, some disputes will

¹³ See 47 C.F.R. § 24.245.

¹⁴ See 47 C.F.R. §§ 24.241, 24.245(b).

nonetheless arise. Indeed, under the 1.9 GHz rules, there was a perverse economic incentive to dispute cost sharing charges, because any delay simply deferred costs incurred by a subsequent trigger. To remedy this, T-Mobile suggests that the Commission explicitly approve the charging of interest on cost sharing obligations starting 60 days after the invoice date as long as interest charges conform with the IRS default rate.

II. CONCLUSION

T-Mobile strongly supports the implementation of relocation policies that will most efficiently open the 2.1 GHz band to more advanced wireless services. This goal can be accomplished by using the 1.9 GHz band relocation as a framework, and improving upon and modifying this framework based on lessons learned from previous relocation proceedings. With modifications to and clarifications of the procedures and rules associated with relocations, the relocation of the 2.1 GHz can be effectuated in an efficient and equitable proceeding, which will serve the important goal of providing new and advanced technologies to the American public.

Respectfully submitted,

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