

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)
)
Amendment of Part 2 of the Commission's)
Rules to Allocate Spectrum Below 3 GHz for)
Mobile and Fixed Services to Support the) ET Docket No. 00-258
Introduction of New Advanced Wireless)
Services, including Third Generation Wireless)
Systems)

REPLY COMMENTS OF W.A.T.C.H. TV COMPANY

W.A.T.C.H. TV Company (“W.A.T.C.H. TV”), a provider of wireless broadband and multichannel video service to consumers in and around Lima, Ohio, hereby submits its reply comments in response to the FCC’s *Fifth Notice of Proposed Rulemaking* (“*Fifth NPRM*”) in ET Docket No. 00-258. As discussed below, the FCC’s rules for relocation of Broadband Radio Service (“BRS”) channels 1 and 2 out of the 2150-2162 MHz band are critically important to our business, since we are using both channels to provide wireless broadband service to thousands of subscribers in western Ohio, many of whom have little or no other broadband service available to them. Therefore, consistent with the proposals offered in the comments of the Wireless Communications Association International, Inc. (proposals that W.A.T.C.H. TV supports),¹ the FCC’s rules must protect our ability to continue providing our existing wireless broadband service, *and* allow us to modify our facilities as necessary to add new customers.

¹ See Comments of the Wireless Communications Association International, Inc., ET Docket No. 00-258 (filed Nov. 25, 2005).

W.A.T.C.H. TV's story has long been a matter of record at the FCC. After nearly thirteen years and well over \$20,000,000 of the company's own investment, we have successfully transformed our operations from the 11-channel analog video-only service we launched in 1992 into a state-of-the-art network that utilizes the BRS/EBS spectrum to provide over 200 channels of digital video and audio service to over 12,000 subscribers. In addition, W.A.T.C.H. TV offers a wireless broadband Internet access service using high-power frequency division duplex ("FDD") technology in which BRS channels 1 and 2 are used for the upstream path. W.A.T.C.H. TV currently provides wireless broadband service to over 5,000 subscribers (with more signing up every month), many of whom have no other source of high-speed Internet access.

Plain and simple, W.A.T.C.H. TV's success is a direct result of our ability to add subscribers in response to consumer demand. As of the end of its first year of operation, our 11-channel analog wireless cable system served 1,706 subscribers. After entering into leasing arrangements for all available EBS channels and expanding our programming, demand for our service increased substantially – subscribership more than tripled, reaching nearly 6,000 subscribers by March, 1994. Since that time, our digitization of our multichannel video service and offering of two-way broadband service (both in response to FCC initiatives for enhancing BRS/EBS service) has ratcheted customer demand even higher, to the point where we now serve over 5,000 wireless broadband Internet subscribers and over 12,000 video subscribers. Of course, none of this growth or the associated benefits to consumers would have been possible had the FCC at any time prevented W.A.T.C.H. TV from adding customers who wanted to receive W.A.T.C.H. TV's services.

It therefore is baffling that the mobile telephone industry's initial comments on the *Fifth NPRM* contend that the public interest would be better served by prohibiting W.A.T.C.H. TV from continuing to add new customers until it is displaced from the 2150-2162 MHz band. Verizon, for example, argues that W.A.T.C.H. TV and other operators using BRS channels 1 and 2 should be banned from adding any new subscribers whatsoever until they are removed from the 2150-2162 MHz band.² Similarly, although CTIA does concede that “[n]othing . . . should limit BRS licensees from adding customers in the markets where hub station receivers are already deployed,”³ it appears to be arguing that if we modify our BRS base station receiving system to accommodate that growth, our base station hub would have to suffer interference from AWS and would not be eligible for any reimbursement for our relocation costs.⁴ In effect, then, our reward for adding new subscribers (which we had thought the FCC *wants* BRS operators to do) would be full responsibility for our own relocation costs and loss of our interference protection, while the AWS licensee displacing us from the 2150-2162 MHz band would remain free to deploy facilities that interfere with our BRS channel 1 and 2 operations whenever it likes, with no obligation whatsoever to relocate us to new spectrum, or pay for it.

None of this makes any sense. As discussed both in the comments of WCA and Sprint Nextel, there is no fairness in permitting an AWS licensee to stop a BRS operator from adding

² See Verizon Comments at 6-7 (asking the FCC “to institute a freeze on the construction of new facilities and any other modifications to BRS systems”).

³ See CTIA Comments at 12.

⁴ See CTIA Comments at 12.

new subscribers until it decides at its leisure when and where it will deploy its own facilities.⁵ The unfairness is magnified by the fact that AWS licensees will, in one form or another, *be a competitor to BRS*.⁶

If we are to continue to serve our region, including rural areas without access to DSL or cable modem service, we must be permitted not only to add subscribers, but to make modifications to our base station reception system to accommodate those new subscribers. Due to our rapid rate of growth, our base station will eventually approach full capacity and require modification to increase capacity as we continue adding new customers. W.A.T.C.H. TV has already converted its antenna system from four 90 degree sectors to eight 45 degree sectors to meet the growing demand for its broadband service, and anticipates a further sector-split (which results in increased frequency reuse) if existing capacity is strained. Depending on when the relevant winner of the upcoming Advanced Wireless Service (“AWS”) auction asks that we vacate the 2150-2162 MHz band, it is entirely possible that we will have to resectorize our antenna system again before our operations on BRS channels 1 and 2 are relocated to their new spectrum. Hence, it is absolutely essential that the FCC’s rules for BRS relocation permit us to implement such modifications and receive appropriate compensation up until the point at which our operations on BRS channels 1 and 2 are moved from the 2150-2162 MHz band to new spectrum. Otherwise, we will be forced to limit our subscriber

⁵ See WCA Comments at 37-38; Sprint Nextel Comments at 23.

⁶ See WCA Comments at 10-11 (“[The] complexities are compounded here when one considers that BRS channels 1 and 2 are primarily used to provide wireless broadband services directly to retail subscribers, and that many new AWS licensees will either already be offering competitive DSL, cable modem or wireless broadband services or will be acquiring their AWS spectrum with the intent of offering a competing wireless broadband service.”).

growth and in the process will not be able to serve residents of rural areas that do not have access to an alternative source of broadband.

In addition, W.A.T.C.H. TV urges the FCC to reject the mobile industry's attempt to force BRS operators to estimate their relocation costs ahead of the AWS auction, and to thereafter limit an AWS licensee's reimbursement obligation to 110% of those estimated costs.⁷ The *Fifth NPRM* already establishes that in the case of an involuntary relocation "the new AWS licensee must guarantee payment of *all* relocation expenses"⁸ The mobile industry's proposal is a none too subtle attempt to drive a loophole through that policy that would effectively require BRS operators to bear some of their own relocation costs, which of course turns the policy on its head. Furthermore, as a practical matter the mobile industry's proposal is a non-starter, since it is impossible for W.A.T.C.H. TV or any other BRS operator to make a meaningful pre-auction estimate of its relocation costs when it does not know when (if ever) it will be relocated, or what the relevant cost factors will be at the time it is relocated (e.g., number of subscribers, equipment/network design, cost of labor, interference issues with neighboring facilities, etc.). We will be happy to provide potential AWS auction participants with information regarding our current 2.1 GHz band facilities and the size of our subscriber base. With that information and armed with knowledge of its own deployment timetable, any AWS auction participant can make its own estimate of its relocation costs.

Similarly, we strongly oppose both the FCC's proposal to "sunset" an AWS licensee's obligation to fund our relocation after 10 years and CTIA's variation under which the sunset

⁷ See CTIA Comments at 9-10, T-Mobile Comments at 3.

⁸ See *Fifth NPRM* at ¶ 25 (emphasis added).

would occur after fifteen years.⁹ Any sunset, no matter when it occurs, is nothing more than a mechanism for shifting the obligation to pay relocation costs from AWS licensees to BRS operators, even though AWS licensees remain the direct beneficiaries of BRS relocation regardless of when it occurs. If the FCC truly believes that AWS licensees must guarantee payment of all relocation costs, then the FCC should not reverse field and allow that obligation to “sunset” at some arbitrary point in the future. The FCC must not forget that AWS licensees have fifteen years within which to construct facilities that satisfy the FCC’s substantial service requirement for license renewal, and that an AWS licensee does not have to build out to all or even a majority of its geographically licensed service area in order to demonstrate substantial service. In fact, even where an AWS licensee qualifies for a rural “safe harbor” under the FCC’s substantial service test, it is only required to provide coverage to 75 percent of the geographic area in as little as 20 percent of the rural areas encompassed by its license.¹⁰ Hence, an AWS licensee could easily force us to fund our own relocation simply by delaying its own deployment in our more rural market until after the sunset date.

In adopting relocation procedures for BRS, the FCC also must not lose sight of just how complex BRS relocation will be for operators like W.A.T.C.H. TV who serve thousands of subscribers. Among other things, BRS relocation will require changeouts of customer premises equipment, and thus W.A.T.C.H. TV will be required to, for example, notify its customers that their equipment must be changed out; schedule and coordinate truck rolls for changeouts at customer premises; incur labor and other expenses associated with the

⁹ See *Fifth NPRM* at ¶ 26, CTIA Comments at 12-13.

¹⁰ See *Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies To Provide Spectrum-Based Services*, 19 FCC Rcd 19078, 19123 (2004).

changeout process; and follow-up with its customers to verify that their new equipment is working properly and that they were otherwise satisfied with the changeout process.¹¹ All of this must be done in a manner that minimizes disruption of each subscriber's service, and that otherwise does not undermine the customer goodwill we have worked extremely hard to maintain over the past decade. To say the least, it will be no small feat to complete that task with a small staff already devoted to other aspects of our business. And, it is not something that the Commission can trust an AWS licensee – one who will be competing for our subscribers – to do on our behalf.

Accordingly, in view of the risks BRS relocation will impose on W.A.T.C.H. TV's operations, we firmly endorse WCA's recommendation that BRS operators be given sole responsibility for selecting and deploying their "comparable facilities" for BRS channels 1 and 2 and taking all other steps necessary for relocation of their operations to their replacement spectrum, subject to full payment of all associated costs by the relevant AWS licensee.¹² Adoption of this approach is necessary for the reasons set forth in WCA's comments and need not be repeated here.¹³

As part and parcel of this process, it is essential that the Commission adopt WCA's proposals, based on the 800 MHz rebanding that is currently underway, to require the appropriate AWS licensee to advance the funding necessary for us to accomplish the migration to alternative spectrum, and pay our internal costs related to the process.¹⁴ Simply

¹¹ See WCA Comments at 10 n.21.

¹² See WCA Comments at 14-16.

¹³ See WCA Comments at 10-14.

¹⁴ See WCA Comments at 22-27.

stated, we do not have available the funds necessary to accomplish this migration without those funds being advanced, subject to adjustment following the migration if our initial estimate proved too high or too low. Thus, pre-payment based on a good faith estimate of costs is essential. Similarly, it is essential that our internal costs associated with the process of migrating to alternative spectrum be reimbursed. Relocation will put a major strain on our resources, but it is essential that we maintain close control over it because, if mishandled, the process of changing equipment at every subscriber location could adversely impact our standing with our subscribers. This is not something to be left solely to contractors, and we should be reimbursed for the costs of our personnel along the same lines that the 800 MHz band Transition Administrator has adopted.

Lastly, W.A.T.C.H. TV reiterates its request that the FCC designate the 2496-2500 MHz and 2686-2690 MHz bands as the replacement spectrum for BRS channels 1 and 2, respectively, for any BRS multichannel video programming distributor (“MVPD”) that is permitted to utilize the current BRS/EBS bandplan in the future.¹⁵ W.A.T.C.H. TV agrees with WCA that when involuntarily migrating out of the 2.1 GHz band, BRS licensees should be entitled to relocate to their designated relocation spectrum (although they should have the option to relocate to other spectrum where doing so does not increase the costs of the comparable facilities). For the reasons discussed in W.A.T.C.H. TV’s filings in WT Docket No. 03-66, designating the 2496-2500 MHz and 2686-2690 MHz bands as the relocation spectrum for MVPDs that do not transition to the new bandplan is the best available solution for providing replacement spectrum for their operations on BRS channels 1 and 2.

¹⁵ See W.A.T.C.H. TV Company Petition for Reconsideration, WT Docket No. 03-66, at 11-13 (filed Jan. 10, 2005); WCA Petition for Reconsideration, WT Docket No. 03-66, at 35-37 (filed Jan. 10, 2005).

WHEREFORE, for the reasons set forth above, W.A.T.C.H. TV Company requests that the FCC adopt rules for BRS relocation in accordance with WCA's comments and those set forth above in response to the *Fifth NPRM*.

Respectfully submitted,

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