

**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	)	
_____	)	

**REPLY COMMENTS OF CTIA – THE WIRELESS ASSOCIATION®**

CTIA – The Wireless Association® (“CTIA”)<sup>1</sup> submits these reply comments in response to the comments filed in the above-captioned proceeding.<sup>2</sup> In this proceeding, the Federal Communications Commission (“FCC” or “Commission”) sought comment on the relocation procedures that should be applied to Broadband Radio Service (“BRS”) operations in the 2150-2160/62 MHz band and to Fixed Microwave Service (“FS”) operations in the 2160-2175 MHz band.<sup>3</sup> The FCC also sought comment on creation of a cost-sharing clearinghouse for relocation of incumbents in the AWS bands. The record in this proceeding overwhelmingly

---

<sup>1</sup> CTIA – The Wireless Association (“CTIA”) is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the organization covers Commercial Mobile Radio Service (“CMRS”) providers and manufacturers, including cellular, broadband PCS, and ESMR, as well as providers and manufacturers of wireless data services and products.

<sup>2</sup> *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*, Eighth Report and Order, Fifth Notice of Proposed Rulemaking, and Order, 20 FCC Rcd 15866 (2005) (“*Eighth R&O*” or “*Fifth NPRM*”).

<sup>3</sup> *See 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 MHz and 2500-2690 MHz Bands*, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 14165 (2004) (“*BRS R&O*”).

demonstrates that the transition to Advanced Wireless Services (“AWS”) in these bands should be rapid and equitable.<sup>4</sup>

Overall, the commenters in this proceeding indicate that equity is enhanced by certainty.<sup>5</sup> Certainty for AWS promotes the public policy benefit of ensuring licenses auctioned are known assets. Certainty for BRS ensures their ability to provide uninterrupted service to their subscribers. In both cases, resolving ambiguities enhances business planning. Certainty and fairness can be achieved by appropriately balancing the rights of incumbents to pursue their businesses and understand the relocation environment and the rights of new entrants to know when and how they will be able to access the spectrum. CTIA’s proposals in this proceeding provide the appropriate balance between the incumbents’ and the new entrants’ rights.

**I. BRS AND FS RELOCATION FROM THE 2.1 GHZ BAND SHOULD BE LARGELY BASED ON THE PROVEN AND EFFECTIVE 1.9 GHZ MODEL.**

The record broadly supports using the 1.9 GHz relocation procedures established in the *Emerging Technologies* proceeding as a framework for the current relocation.<sup>6</sup> Indeed, as demonstrated in CTIA’s initial comments and other parties’ comments in this proceeding, AWS licensees and other new entrants should not be required to relocate incumbents unless and until the AWS licensee would interfere with the incumbent.<sup>7</sup> To provide otherwise would unduly burden new entrants by requiring them to relocate non-interfering systems, diverting essential funding away from the development and deployment of new advanced wireless services. That

---

<sup>4</sup> See, e.g., Sprint Nextel Comments at iii; Verizon Wireless Comments at 1.

<sup>5</sup> See, e.g., Wireless Communications Association International (“WCA”) Comments at 2; T-Mobile Comments at 7.

<sup>6</sup> See, e.g., Sprint Nextel Comments at 3 (“Sprint Nextel supports the general framework the Commission proposes”); PCIA Comments at 3 (“adoption of the 1.9 GHz clearing model...is the only practicable means to achieving efficient and timely clearing of the 2.1 GHz band”).

<sup>7</sup> See, e.g., CTIA Comments at 7-8; Sprint Nextel Comments at 27; WCA Comments at 32; Verizon Wireless Comments at 3.

result would be clearly contrary to the public interest. Similarly, once an incumbent has been relocated, the deployment of facilities that would have interfered with previously relocated facilities should trigger cost-sharing to ensure that all parties benefiting from the relocation share in the financial burden of band clearing.

Based on practical differences between the 1.9 GHz and 2.1 GHz environment, however, certain modifications to the 1.9 GHz relocation structure are warranted. First, to ensure an efficient transition, the FCC must clarify when a new entrant must relocate an incumbent prior to initiating operations. In such regards, CTIA supports Sprint Nextel's position that the interference test should be based on line-of-sight criteria.<sup>8</sup> This line-of-sight standard will adequately protect incumbents from harmful interference while also providing new entrants the certainty they need to develop AWS deployment plans. Accordingly, CTIA believes the FCC should require new entrants to relocate BRS systems that are within the line of sight of a new entrant's facilities prior to initiating service.

Second, the Commission should slightly modify the implementation procedures that govern the negotiation period. In particular, virtually all commenters agree that the Commission should eliminate the voluntary negotiation period.<sup>9</sup> Accordingly, the FCC should proceed directly to a three-year mandatory negotiation period. In addition, despite incumbents' arguments to the contrary,<sup>10</sup> the FCC should clarify that only new entrants have the right to trigger mandatory negotiations.<sup>11</sup> In the *Eighth R&O*, the Commission concludes that redesignation of the 2.1 GHz band for AWS will serve the public interest by allowing for the

---

<sup>8</sup> Sprint Nextel Comments at 27.

<sup>9</sup> See, e.g., T-Mobile Comments at 4; BellSouth Comments at 6.

<sup>10</sup> See, e.g., BellSouth Comments at 6-7.

<sup>11</sup> See, e.g., Verizon Wireless Comments at 4.

rapid introduction of high-value services in the band.<sup>12</sup> Moreover, in the *Fifth NPRM*, the Commission notes that new entrants will likely wish to deploy service gradually because of the large service areas that will be built out, concluding that providing new entrants with the flexibility to build-out their service areas on their own schedule serves the public interest.<sup>13</sup> To allow incumbents to initiate the mandatory negotiation period as proposed by several of the incumbents<sup>14</sup> would subject new entrants to costs associated with building out areas where they have no immediate intent of deploying service. Such a requirement would require new entrants to reallocate funding that was originally earmarked for AWS deployment to relocation, ultimately slowing the deployment of AWS to the public.

Third, slight modifications to the involuntary relocation procedure are necessary to address several incumbents' concerns. In such respects, BRS licensees have legitimate concerns about controlling construction of their own replacement facilities, disclosure of end user subscriber lists to competitors, and allowing competitors to manage the interface with their subscribers.<sup>15</sup> With the modifications suggested by CTIA below, involuntary relocation can continue to be a valuable tool when parties are unable to reach an agreement and such a process is fully feasible for BRS systems. In particular, CTIA's proposal for a good-faith pre-auction estimate of BRS relocation costs<sup>16</sup> provides an adequate framework that can equitably govern involuntary relocation, because it requires the incumbent to set forth a specific per-subscriber amount for retuning and/or equipment changeout. Thus, it is feasible to implement an involuntary relocation procedure that provides concrete costs but still permits BRS licensees to

---

<sup>12</sup> *Eighth R&O* at ¶ 9.

<sup>13</sup> *Fifth NPRM* at ¶ 14.

<sup>14</sup> *See supra* n. 10.

<sup>15</sup> *See, e.g.*, Sprint Nextel Comments at 24-26; WCA Comments at 14-21.

<sup>16</sup> *See infra* pp. 7-8. *See also* CTIA Comments at 6-7.

solely manage their customer relationships. The FCC simply will need to develop procedures for ensuring that incumbents are relocated within a reasonable period of time after the expiration of the involuntary negotiation period.

Fourth, several modifications proposed by other commenters should be made to address these commenters' limited concerns about application of the 1.9 GHz rules to the current relocation. For example, CTIA concurs with Sprint Nextel that the FCC should adopt a 15-year sunset date for relocation.<sup>17</sup> As Sprint Nextel observes in its comments, new AWS entrants will be given 15-year licenses. Only at the end of this 15-year term will they be required to provide substantial service. Thus, although CTIA believes that new entrants will deploy service as quickly as possible, it concurs that AWS licensees' relocation obligations should terminate on the same date as its initial license term, thereby eliminating any appearance of an incentive to delay broadband deployment in order to avoid having to pay to relocate the incumbent BRS licensees.<sup>18</sup> In addition, eligibility for reimbursement of relocation costs should be dependent upon primary status<sup>19</sup> and an assignment or transfer of control should not disqualify a BRS incumbent in the 2150-2162 MHz from relocation eligibility.<sup>20</sup> These proposals will ensure that incumbents continue to have the flexibility to operate their business while providing new entrants the certainty needed to plan their businesses.

Finally, CTIA supports permitting incumbents to self-relocate,<sup>21</sup> but only subject to the same systemic protections against abuse that were used at 1.9 GHz. At 1.9 GHz, self-relocating incumbents were limited to recovering actual relocation costs, limited by a third party estimate of

---

<sup>17</sup> Sprint Nextel Comments at 44.

<sup>18</sup> *See id.* at 44-45.

<sup>19</sup> *See, e.g.*, Verizon Wireless Comments at 5.

<sup>20</sup> *See, e.g.*, WCA Comments at iii.

<sup>21</sup> *See, e.g.*, BellSouth Comments at 5.

reasonable relocation costs and by a relocation cap. In addition, self-relocating incumbents at 1.9 GHz recovered their relocation costs only if a PCS licensee deployed facilities that would have interfered with their system. As a whole, these policies proved very effective in balancing the equities between incumbents that wish to have the certainty of early relocation with those of the new entrant that may ultimately benefit from such early relocation. In this case, CTIA believes that self-relocating incumbents should also be limited to recovering actual relocation costs, as documented by a third party appraisal, and that the appropriate cap would be 110 percent of the incumbent's pre-auction relocation estimate.<sup>22</sup> In addition, as was the case with the 1.9 GHz relocation, self-relocating incumbents should only be entitled to reimbursement if an AWS licensee ultimately deploys facilities that would have interfered with their system.

## **II. THERE IS BROAD RECORD SUPPORT FOR ADOPTING A REIMBURSEMENT THRESHOLD BASED ON COMPARABLE FACILITIES**

As demonstrated in the record, transparency and certainty are essential elements of an effective auction. Without these, new entrants will have no foundation on which to base their valuations for certain licenses. Accordingly, in its comments, CTIA proposed the adoption of a 110 percent reimbursement threshold on all relocation expenses. More specifically, the BRS incumbents would be required to provide a pre-auction system-by-system estimate of relocation costs based on comparable facilities. The maximum amount an AWS entrant would be required to spend on relocating incumbent BRS facilities is 110 percent of the costs identified, in good faith, by a BRS licensee in a pre-auction disclosure. While such estimates would be subject to verification to ensure comparability and verify the actual amounts paid, disbursements would be limited to 110 percent of the incumbent's pre-auction estimate. This proposal not only provides

---

<sup>22</sup> *But see infra* p. 9 (allowing for recovery of unforeseen actual costs above the cap, in certain instances).

incumbents and new entrants with the certainty that many parties indicated was essential to an equitable and efficient relocation but also resolves many of the major controversies in the record regarding incumbents' and new entrants' rights.

As an initial matter, this proposal is consistent with other relocation approaches. For example, in the Commercial Spectrum Enhancement Act ("CSEA"), Congress established a Spectrum Relocation Fund through which federal agencies would be reimbursed for the cost of relocating their operations out of auction proceeds.<sup>23</sup> More specifically, proceeds from any auction of eligible frequencies would be directed into the Spectrum Relocation Fund and would then be distributed to federal agencies whose operations had been relocated. To ensure that adequate funds were available to cover the costs of all federal user relocations, any auction of eligible frequencies would be invalidated if it did not result in cash proceeds that were at least equal to 110 percent of the total estimated relocation costs that had been provided to the FCC.<sup>24</sup> Similarly, within CSEA, federal agencies were also required to submit cost estimates for individual system relocations and, absent extraordinary circumstances, were limited to 110 percent of those estimates when performing the actual relocation. In the 1.9 GHz proceeding, the FCC also capped the total FS relocation costs that a new entrant may be reimbursed for by a subsequent new entrant at \$250,000, with a supplemental \$150,000 if a new tower was required.<sup>25</sup> CTIA's proposal does not require a departure from FCC precedent and indeed reflects a trend towards capping relocation expenses to provide both incumbents and new entrants with additional certainty.

---

<sup>23</sup> See *Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures*, Declaratory Ruling and Notice of Proposed Rulemaking, 20 FCC Rcd 11268 (2005); Commercial Spectrum Enhancement Act, Pub. L. No. 108-494, 118 Stat. 3986, Title II (2004) (codified in scattered sections of Title 47 of the United States Code) ("CSEA").

<sup>24</sup> See CSEA § 203(b).

<sup>25</sup> See 47 C.F.R. § 101.82(c).

CTIA's proposal also resolves many of the greatest record controversies regarding BRS relocation. First, incumbents will be able to add new customers as requested by many commenters.<sup>26</sup> As a general matter, the flexibility afforded by the 110 percent cap would permit BRS incumbents to continue to add customers in the normal course of business. In addition, carriers that have not relocated after an extended period of time and have experienced significant unforeseen customer increases should be permitted to seek recovery of actual costs above the 110 percent cap. Second, this proposal will allow incumbents to self-relocate with the knowledge that they will be reimbursed up to 110 percent of their estimated costs should an AWS licensee begin to operate in an area that would have caused interference to the incumbent. In other words, self-relocating incumbents will have a guideline as to how much they may spend on relocation. Finally, this proposal provides a feasible means for addressing BRS licensees' concerns regarding involuntary relocations.

As indicated above, the FCC will need to develop procedures for ensuring that incumbents are relocated within a reasonable period of time after the expiration of the involuntary negotiation period. In addition, for the 110 percent cap to be effective, the FCC should specify what costs may be included in incumbents' good-faith estimates. Commenters generally agree that incumbent BRS licensees should be provided with comparable facilities defined as wireless facilities that will provide the same level of throughput, coverage, reliability, and operating costs. AWS new entrants should not be responsible for costs associated with running incumbents' businesses that are not related to the relocation.

### **III. CTIA SUPPORTS CREATION OF A COST-SHARING CLEARINGHOUSE FOR AWS RELOCATIONS**

CTIA reiterates that a functional, cost-effective, and responsive clearinghouse will be

---

<sup>26</sup> See, e.g., SpeedNet Comments at 2-3; WCA Comments at 37-41.

essential to achieving the Commission's goals of a rapid and equitable transition of the 2.1 GHz band.<sup>27</sup> Overall, the record demonstrates that all entities that benefit from the relocation of an incumbent should be required to contribute to the costs associated with that relocation, whether AWS or other new entrant, such as MSS.<sup>28</sup> Although the cost-sharing rules used previously in the 1.9 GHz proceeding provide a strong foundation on which to base this proceeding's cost sharing rules, several modifications are necessary. In particular, a more effective mechanism for resolving party disputes is essential. One option would be for parties to submit to arbitration, with a right to bring questions of law before the FCC.<sup>29</sup> In addition, the FCC should establish an expedited procedure for issuing decisions on such questions of law certified to the FCC by an approved clearinghouse. Finally, to ensure consistent treatment of similar services, the Commission should develop a single set of cost-sharing rules and universally apply them to all implicated services. As currently written, the FCC's cost-sharing rules differ from service to service,<sup>30</sup> and harmonized rules should be implemented in Parts 22, 24, 25, and 101.

---

<sup>27</sup> See, e.g., T-Mobile Comments at 6; Comsearch Comments at 5-6.

<sup>28</sup> See, e.g., WCA Comments at 51; TMI and Terrestar Comments at 1-2.

<sup>29</sup> See <http://www.adr.org/sp.asp?id=22092> (last visited Dec. 9, 2005).

<sup>30</sup> See, e.g., CTIA Comments at 13-14.

#### IV. CONCLUSION

As demonstrated above, the record in this proceeding strongly supports the use of the *Emerging Technologies* relocation procedures in the current relocation, but also indicates that several modifications to these procedures must be made to ensure an effective and efficient transition.

Respectfully submitted,

By: \_\_\_\_\_

Christopher Guttman-McCabe

Vice President, Regulatory Affairs

Paul W. Garnett

Assistant Vice President, Regulatory Affairs

CTIA – The Wireless Association®

1400 16<sup>th</sup> Street, NW

Suite 600

Washington, DC 20036

(202) 785-0081

Dated: December 12, 2005