

**BEFORE THE
FEDERAL COMMUNICATIONS Commission
WASHINGTON, D.C. 20554**

In the Matter of)
)
Amendment of Part 2 of the Commission’s Rules) ET Docket No. 00-258
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 SPEEDNET, L.L.C.

SpeedNet, L.L.C. (“SpeedNet”), pursuant to Section 1.415(c) of the Commission’s rules, hereby submits its Reply Comments to the *Eighth Report and Order and Fifth Notice of Proposed Rulemaking and Order* (“Order”) in the above-referenced proceeding. SpeedNet submitted its Comments on November 22, 2005 (“Comments”).

I. Expansion of Services After November 25, 2005

As noted in its Comments, SpeedNet continues to support its proposition that BRS 1 and/or 2 channels that are currently being used should be allowed to expand their services as needed, and be reimbursed when such services must be relocated, as of ninety (90) days after notice to commence negotiations.¹ As noted in comments submitted by Sprint Nextel Corporation (“Sprint”) and others, to cut-off all reimbursement as of the arbitrary deadline of November 25, 2005, is to penalize and ensure the demise of businesses that were put into operation under the Commission’s

¹ As noted below, SpeedNet supports having either the AWS Licensee or BRS Licensee and/or Lessee commence such negotiations.

former rules, either because (i) the cost to relocate the number of subscribers that will be acquired over the next few years is too great a financial burden to carry or because (ii) to cease taking new customers due to expected transition costs means the inevitable decline of such businesses, as there is always churn in these businesses and new customers are vital to ensure continued revenue.² Furthermore, the 2.5 GHz spectrum allocated to these Channels is not available in most markets for immediate use, which means the 2.1 GHz spectrum currently in use is the only spectrum available to continue such operations.

II. Relocation of BRS Spectrum

1. BRS Licensees Should be the Ones to Self-Relocate Their Customers. SpeedNet is in complete support of the proposals put forth by the Wireless Communications Association International, Inc. (“WCA”) and other petitioners that due to the fact that the AWS Licensee is going to directly compete with services being provided by the AWS operator, self-relocation is the only way to protect subscriber information and to ensure the best transition scenario for the customer who will be inconvenienced by this relocation.³ In fact, SpeedNet did not even consider that the AWS Licensee would be the one to do the physical relocation of its customers and always

² Comments of Sprint Nextel Corporation at 21 (“Sprint Comments”). Sprint gives a litany of reasons as to why such a cut-off will endanger broadband operations, such as the unexpected taking away of BTA Authorization rights among other reasons. See also Comments on Fifth Notice of Proposed Rulemaking by the WCA (“WCA Comments”) at page 42. See also Comments of BellSouth Corporation, Bellsouth Wireless Cable, Inc. and South Florida Television, Inc. (“BellSouth Comments”) at page 5.

³ See WCA Comments at page 15.

assumed that the AWS Licensee's role was strictly to provide reimbursement funds.

2. WCA's Reimbursement Procedures. SpeedNet supports the WCA's proposed procedures in seeking reimbursement to be used either pre- or post-relocation.⁴ SpeedNet believes it can relocate its customers within a twenty-four month period, though it would like the option to extend that period if necessary.⁵

3. Clearing the 2.5 GHz band. SpeedNet is in support of the WCA's proposal to have the AWS Licensee and Globalstar share the costs to remove operations currently in place on the 2496-2500 MHz band and that such removal must occur prior to relocation of the BRS-1 channel.⁶ Furthermore, since most markets have an A1 channel in operation (currently in operation in the 2500-2506 MHz band), SpeedNet cannot relocate its BRS 1 channels until transition of the Broadband Radio Service ("BRS") and Educational Broadband Service ("EBS") in the 2.5 GHz band occurs.⁷

4. Ten Year Deadline to Relocate Spectrum. SpeedNet is in support of a ten year deadline to have all BRS 1 and 2 channels relocated, as opposed to a sunset date in which the AWS Licensee is no longer responsible for reimbursement costs.⁸ The latter provides no incentive to the AWS Licensee to cooperate and move forward in negotiations, as it has a fifteen year deadline in which to meet its build-out requirements.

III. Comparable Facilities

⁴ Id. at page 23.

⁵ Id. at page 27.

⁶ Id. at page 49.

⁷ See Sprint Comments at page 37.

⁸ See WCA Comments at page 31.

1. WCA's Expanded Definition of Comparable Facilities. SpeedNet is in agreement with the WCA that transitioning of this spectrum is more akin to the rebanding of the 800 MHz services and should be treated as such.⁹ It's reference to a broader definition of what should be accounted for as comparable facilities should be used as the basis for determining what will be taken into account when determining reimbursements, including its reference to internal costs and customer premise equipment that must be covered under the calculation used for such costs.¹⁰ The WCA's comments that each BRS service provider will have its own needs and requirements are completely accurate and further support the need for the Commission to allow for flexibility in reimbursing such providers.¹¹

2. Relocation of Base Stations. SpeedNet is in complete disagreement with Verizon and CTIA that only certain base stations should be covered that the AWS Licensee may interfere with, but not the multiple base stations that constitute the network being used throughout the Geographical Service Area ("GSA").¹² It is because of the allocation of all of the 2.1 GHz spectrum to the AWS Licensee that the BRS Licensees must relocate. Therefore, reimbursement for relocation of all of the base stations using the BRS 1 and 2 channels on the 2.1 GHz spectrum must be mandated, as they would not be moved *but for* the Commission's mandate that they move to the 2.5 GHz band to clear the band for AWS users.

⁹ Id. at page 14.

¹⁰ Id. at footnote 40 (definition of "comparable facilities"); and page 26 (internal costs). References to payment of CPE costs can be found at Sprint Comments at page 40 and Comments of C&W Enterprises, Inc. ("C&W Comments") at page 4.

¹¹ Id. at page 24.

¹² See Comments of Verizon Wireless ("Verizon Comments") at footnote 6; see also Comments of CTIA – the Wireless Association ("CTIA Comments") at footnote 15.

3. Replacement With Wireless Facilities. SpeedNet is in Agreement with Sprint that any replacement facilities could only be “comparable” if provided through other wireless facilities, not competing technologies such as cable, DSL or fiber networks.¹³

4. Estimation of Reimbursement Costs. SpeedNet is in disagreement with the CTIA Comments regarding its plan for the BRS Licensee and/or Lessee to provide an estimate of costs to relocate prior to the AWS auction that the BRS Licensee must then be held to at a cap of 110% of those estimated costs.¹⁴ Even CTIA’s proposal conflicts itself, as it states that it has experience in estimating such costs, then admits that estimating such costs for BRS systems is too novel to expect even an entity that has experience estimating costs in other services to do. Yet they expect the BRS Licensee and/or Lessee to do so and be held to such estimations which can amount to no more than a guess at what it might cost to move their entire system. To hold to this formula is once again to penalize the BRS Licensee and/or Lessee for transitioning. The AWS auction participant has ample opportunity to review whether it will have to bear relocation costs in a the markets in which it has interest and to review filings requested by the FCC, due by December 27, 2005, to determine how extensive those costs may be. In addition, through these comments, SpeedNet and others have already provided some guidelines as to what costs can be expected and how much they may run as a starting point. The WCA’s proposal of the BRS Licensee and/or Lessee in submitting information to the AWS Licensee both pre-

¹³ See Sprint Comments at page 35.

¹⁴ See CTIA Comments at page 6.

and/or post-relocation of the channels is the fairest method available in light of the uncertainty of such costs.¹⁵

IV. Negotiation Procedures

1. Including Lessee in Negotiations. SpeedNet fully supports the mandatory requirement that Lessees participate in any and all negotiations, for if the lessee differs from the licensee, it is the lessee's facilities being replaced and the licensee will have little knowledge of how to estimate costs to replace such facilities.¹⁶ Likewise, it agrees with BellSouth that the BRS Licensee and/or Lessee may instigate negotiations in which to obtain reimbursement under such procedures.¹⁷

2. Reimbursement for Transition Proponent. SpeedNet supports the proposal that if a Proponent who is transitioning BRS and EBS spectrum also transitions the BRS 1 and/or 2 channel as part of a market, then it should be able to seek reimbursement of the costs associated with transitioning such BRS 1 and/or 2 channels from the AWS Licensee.¹⁸

CONCLUSION

The Commission's decision in this rulemaking will determine whether those companies that have been pioneers in deploying broadband service using the BRS 1 and 2 channels will ultimately survive. Those companies hoping to acquire AWS spectrum will make every effort to minimize the costs to them at the expense of these operators. It is now in the Commission's

¹⁵ See WCA Comments at page 23.

¹⁶ Id. at page 44; see also Sprint Comments at page 49.

¹⁷ See BellSouth comments at page 6.

¹⁸ See WCA Comments at 51.

hands to review the comments submitted and see through such efforts and to provide just compensation to those operators who must now relocate their facilities at a great detriment to their customers and their businesses.

SPEEDNET, L.L.C..

By /s/ John Ogren
John Ogren
President

December 12, 2005