

**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 C&W ENTERPRISES, INC.**

C&W Enterprises, Inc. (“C&W”), 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. C&W submitted its Comments on November 25, 2005 (“Comments”).

**I. Expansion of Services After November 25, 2005**

C&W desires to expand 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 up until notice is given that mandatory negotiations are to commence to support the proposal of SpeedNet, L.L.C. to extend such deadline to ninety (90) days after notice to commence negotiations.<sup>1</sup> 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

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<sup>1</sup> See Comments of SpeedNet, L.L.C. (“SpeedNet Comments”) at page 2. C&W supports having either the AWS Licensee or BRS Licensee and/or Lessee commence such negotiations

businesses that were put into operation under the Commission's former rules since 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.<sup>2</sup> 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. C&W is in complete support of the proposals put forth by the Wireless Communications Association International, Inc. ("WCA") and other petitioners that allow self-relocation by the BRS operator, especially considering that the AWS Licensee is going to directly compete with services being provided by the BRS operator<sup>3</sup>. Accordingly, 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. In fact, C&W always assumed that it would be responsible for the actual physical labor involved in this relocation process.

2. WCA's Reimbursement Procedures. C&W supports the WCA's proposed reimbursement procedures.<sup>4</sup> C&W believes it can relocate its

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<sup>2</sup> 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.

<sup>3</sup> See WCA Comments at page 15.

<sup>4</sup> Id. at page 23.

customers within a twenty-four month period, though it may need the option to extend that period if necessary.<sup>5</sup>

3. Clearing the 2.5 GHz band. C&W 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.<sup>6</sup> Furthermore, since there is an A1 channel in operation in C&W's San Angelo, Texas market, C&W 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.<sup>7</sup>

4. Ten Year Deadline to Relocate Spectrum. C&W 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.<sup>8</sup> 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**

1. WCA's Expanded Definition of Comparable Facilities. C&W is in agreement with the WCA that 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

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<sup>5</sup> Id. at page 27.

<sup>6</sup> Id. at page 49.

<sup>7</sup> See Sprint Comments at page 37.

<sup>8</sup> See WCA Comments at page 31.

costs.<sup>9</sup> 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.<sup>10</sup>

2. Relocation of Base Stations. C&W is in disagreement with Verizon and CTIA that reimbursement for only select base stations should be covered, and not the multiple base stations if more than one is used to create a network throughout the Geographical Service Area ("GSA").<sup>11</sup> 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.

3. Replacement With Wireless Facilities. C&W 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.<sup>12</sup>

4. Estimation of Reimbursement Costs. C&W 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

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<sup>9</sup> 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 SpeedNet Comments at page 4.

<sup>10</sup> See WCA Comments. at page 24.

<sup>11</sup> See Comments of Verizon Wireless ("Verizon Comments") at footnote 6; see also Comments of CTIA – the Wireless Association ("CTIA Comments") at footnote 15.

<sup>12</sup> See Sprint Comments at page 35.

estimated costs.<sup>13</sup> CTIA 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 to do. Yet they expect the BRS Licensee and/or Lessee to do so and to be held to such estimations. To hold to this formula is once again to penalize the BRS Licensee and/or Lessee for having constructed their system. The AWS auction participant has ample opportunity to review whether it will have to bear relocation costs in those limited markets which may require relocation by reviewing those filings requested by the FCC, due by December 27, 2005. C&W and others have already provided some guidelines as to what costs can be expected and how much they may run as a starting point.<sup>14</sup> Considering the situation, the WCA's proposal of the BRS Licensee and/or Lessee in submitting information to the AWS Licensee both pre- and/or post-relocation of the channels is the fairest method available in light of the uncertainty of such costs.<sup>15</sup>

#### **IV. Negotiation Procedures**

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

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<sup>13</sup> See CTIA Comments at page 6.

<sup>14</sup> See SpeedNet Comments at pages 3-5.

<sup>15</sup> See WCA Comments at page 23.

<sup>16</sup> Id. at page 44; see also Sprint Comments at page 49.

<sup>17</sup> See BellSouth comments at page 6.

2. Reimbursement for Transition Proponent. C&W 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.<sup>18</sup>

### CONCLUSION

The Commission's decision in this rulemaking will have a dramatic effect on the survival of C&W, a family run business that has provided service to San Angelo and surrounding rural areas when other providers were unable to or decided it was not cost effective to do so. C&W can only hope that the Commission's ruling will reflect its concerns.

Respectfully submitted,

**C&W Enterprises, Inc.**

By /s/ John W. Jones, Jr. \_\_\_\_\_  
John W. Jones, Jr.  
CEO / President

December 12, 2005

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<sup>18</sup> See WCA Comments at 51.