

**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 T-MOBILE USA, INC.

T-Mobile USA, Inc. respectfully submits this reply to the comments filed in ET Docket No. 00-258.¹ T-Mobile strongly supports the Commission’s desire to efficiently and equitably clear the 2.1 GHz spectrum, which will allow for the growth and development of important new wireless services for the American public. As discussed herein, BRS incumbents should be provided with comparable facilities and relocated in a minimally disruptive manner. At the same time, however, the Commission must balance those goals against providing new AWS licensees with certainty regarding the costs that will be required to relocate incumbents from the spectrum to deliver rapidly needed advanced wireless services to the public. T-Mobile supports the majority of commenters who suggest that the rules should be modeled on the proven relocation policies adopted for the 1.9 GHz spectrum, adapting such rules to compensate for pragmatic differences at 2.1 GHz and incorporating the benefit of real world experiences gained by carriers and incumbents during roll-out of Personal Communications Service (“PCS”) systems.

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”).

I. THE COMMISSION SHOULD MODEL RELOCATION PROCEDURES AFTER THE 1.9 GHz RELOCATION RULES

T-Mobile strongly supports the majority of commenters urging the Commission to adopt 2.1 GHz relocation policies modeled on the proven rules used in the 1.9 GHz spectrum band.² As recognized by commenters, the 1.9 GHz new entrants were able to rapidly roll-out new services for the public in a band heavily used by incumbents in a manner that limited disruptions, equitably distributed costs, and generated only limited disputes.³ However, as T-Mobile and other commenters have noted, the 2.1 GHz band implicates some pragmatic differences that were not factors at 1.9 GHz.⁴ In particular, the greater density of incumbent users at 2.1 GHz, which will include competitors to AWS licensees, argues for refining some policies to ensure, to the greatest degree possible, the rapid transition of the band.

A. T-Mobile Supports CTIA’s Proposal To Obtain Good Faith Pre-Auction Relocation Estimates From BRS Incumbents

T-Mobile believes that CTIA’s proposal to require good faith pre-auction relocation estimates from BRS incumbents, and to cap relocation costs for such incumbents at 110% of that estimate, addresses in a balanced manner several of the key issues that could impact the successful roll-out of new services at 2.1 GHz.⁵ Most importantly, the proposal provides a concrete means for AWS licensees to accurately project such costs for implementation of new services at 2.1 GHz, which will enable bidders to plan with more certainty and more accurately

² Some BRS incumbents advocate using the 800 MHz relocation as a model for the relocation policies that should be adopted for the 2.1 GHz band spectrum relocation. *See* Comments of The Wireless Communications Association International at 14-19. The history of the 800 MHz relocation, however, has shown that these policies allow for delay and inefficiency. These procedures would therefore be obviously detrimental to the Commission’s goals of efficiently and effectively clearing the 2.1 GHz spectrum for advanced wireless services to promote new technologies.

³ *See* Comments of PCIA, The Wireless Infrastructure Association (“PCIA”) at 2.

⁴ *See* Comments of T-Mobile USA, Inc. at 3; Comments of PCIA at 2-3.

⁵ *See* Comments of CTIA at 6, 9-10.

value the spectrum overall. Also, from the BRS incumbents' point of view, there is greater assurance that they will receive appropriate compensation for relocation, since those costs will be known, and that the transition to alternative spectrum will be undertaken in a timely manner. For these reasons, T-Mobile strongly supports CTIA's pre-auction estimate proposal.

As indicated above, T-Mobile also supports CTIA's proposal to limit the reimbursement of BRS licensees to 110% of their pre-auction estimates.⁶ Allowing incumbents to provide good faith estimates, but making such estimates binding within some zone of reasonability, strikes a fair balance between the interest of the incumbent in full compensation for comparable facilities and the interest of AWS licensees in achieving predictability of costs. Unlike the case for 1.9 GHz fixed microwave systems, the costs associated with relocating 2.1 GHz BRS incumbents are less well-defined. T-Mobile believes that BRS incumbents are the only parties with accurate information on the costs associated with relocation for their operations. However, absent some cap on reimbursement post-auction, there is no incentive for an incumbent to engage in the appropriate due diligence to accurately represent its relocation expenses. Additionally, this will permit some flexibility for incumbents, should such estimates prove overly conservative.

T-Mobile notes that the 110% limitation is also consistent with actions taken by Congress for relocation of government systems in the 1.7 GHz band paired with this spectrum for the same auction. Under the provisions of the Commercial Spectrum Enhancement Act ("CSEA"), government entities are required to provide the National Telecommunications and Information Administration ("NTIA") with estimated relocation costs, which are delivered to the FCC pre-auction and used to set the minimal revenue requirement for the auction.⁷ Post-auction, the disbursement of funds, except in special circumstances, is limited to 110% of the relocating

⁶ See Comments of CTIA at 9-10.

⁷ See Commercial Spectrum Enhancement Act, Pub. L. No. 108-494, 118 Stat. 3986, 3992 §202 (2004).

agency's pre-auction estimate. Thus, CTIA's proposal mirrors the process for the relocation of federal users at 1.7 GHz.

B. The Commission Should Adopt Bright Line Threshold Conditions for BRS Relocation at 2.1 GHz

The record shows considerable variation with respect to the conditions under which a new entrant would be required to relocate a BRS incumbent.⁸ On balance, T-Mobile believes the threshold conditions for requiring relocation should parallel the 1.9 GHz band in major respects, but incorporate certain limited modifications to adjust policies that did not serve the public interest. For example, the voluntary negotiation period, as T-Mobile suggested in its earlier comments, permits incumbents to postpone negotiations arbitrarily and should be eliminated.⁹ T-Mobile further supports those commenters that suggest mandatory negotiations should commence with the initiation of a request by the new entrant.¹⁰ Given the benefits of delay for BRS relocation in that more areas will have transitioned to the revised 2.5 GHz band plan, no reason exists for BRS incumbents to be able to accelerate relocation. Moreover, as discussed below, BRS incumbents should have the right to self-relocate, subject to similar conditions used at 1.9 GHz.

Sprint Nextel, and others, have also advocated a line-of-sight test for interference to BRS facilities.¹¹ T-Mobile is concerned that this line-of-sight model may overestimate the interference effects from new AWS operations to existing BRS systems. A model more based on

⁸ See Comments of Verizon Wireless at 5 (“since stations with secondary status are not afforded interference protection, they should not be entitled to relocations that are designed to avoid interference.”); Comments of CTIA at 10-12. *But see* Comments of C&W Enterprises, Inc. at 2 (“[a]ny expansion or commencement of services should continue to be regarded as primary operations subject to reimbursement”).

⁹ See Comments of T-Mobile USA, Inc. at 4-5.

¹⁰ See Comments of Verizon Wireless at 4; Comments of CTIA at 7-8.

¹¹ See Comments of Sprint Nextel Corporation at 14, 26-30.

real-world interference effects, such as a version of the proximity threshold used in the 1.9 GHz relocation process, may better estimate actual interference potential.

Importantly, should the Commission adopt a line-of-sight test or other criteria for mandatory relocation and, presumably, triggering cost-sharing, T-Mobile agrees with those commenters advocating the efficacy of bright-line tests.¹² The benefits in terms of administrative ease for a licensee (or cost-sharing clearinghouse) vastly outweigh the marginal inclusion or exclusion of particular facilities under a bright line test versus an actual interference test. In certain instances, a bright line test may be overly conservative and include systems that may not, in reality, receive any interference from the new AWS system. However, the certainty provided by a bright line test greatly outweighs the over inclusive nature of such a methodology and should expedite the relocation and cost-sharing processes. Thus, should the Commission specify the use of line-of-sight criteria, the Commission should also specify a particular model for determining line-of-sight, as well as any other variable inputs into such a determination so there is no ambiguity as to whether or not a threshold condition has been met.

C. The Commission Must Clarify the Definition of Comparable Facilities To Ensure Successful Repurposing of the 2.1 GHz Band

All commenting parties agree, in the abstract, that BRS incumbents are entitled to comparable facilities.¹³ Moreover, “comparability” has been defined in numerous contexts. Yet, disagreement still exists as to how that definition would apply in the BRS context. As discussed below, the Commission should clarify the application of “comparable facilities” in the BRS

¹² See Comments of PCIA at 5; Comments of CTIA at 5.

¹³ See Comments of CTIA at 9-10; Comments of Verizon Wireless at 4-5; Comments of C&W Enterprises, Inc. at 4-5.

context to ensure that BRS incumbents will be provided with equivalent, but not enhanced facilities.¹⁴

For example, while T-Mobile and others support the system-wide relocation of BRS, some BRS incumbents believe that system-wide relocation should encompass the relocation of both BRS Channels 1 and 2.¹⁵ However, new AWS licensees' spectrum use would only overlap with a portion of BRS Channel 1. T-Mobile believes that the Commission should clarify that AWS licensees in the 2150-2155 MHz band should not be required to relocate and pay the relocation costs for channels in which they will not interfere, i.e., operations in the 2156-2162 MHz band (BRS Channel 2). Should the Commission determine that AWS operations are to occur in the BRS Channel 2 spectrum band, as has been proposed, then those AWS licensees should be required to relocate the BRS incumbents.

Moreover, while there is general accord that Channel 1 can be relocated to 2496-2500 MHz, there is no readily available relocation spectrum for Channel 2 without the transition to a new band plan in the 2500 to 2690 MHz spectrum.¹⁶ BRS incumbents have suggested that BRS Channel 2 could be temporarily relocated to 2686-2690 MHz, but then seek to burden AWS licensees with the costs of: (i) clearing 2686-2690 MHz; (ii) relocating BRS Channel 2 to 2686-2690 MHz; and, presumably (iii) relocation of BRS Channel 2 from 2686-2690 MHz upon rebanding of the 2.5 GHz spectrum.

¹⁴ See Comments of Verizon Wireless at 4-5.

¹⁵ See Comments of C&W Enterprises, Inc. at 2; Comments of BellSouth Corporation, BellSouth Wireless Cable, Inc. and South Florida Television, Inc. at 7-8.

¹⁶ See Comments of Wireless Communications Association International at 49-50. The Commission has decreed that Channel 2 BRS incumbents are to be relocated from 2156-2162 MHz to 2618-2624 MHz. 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 and 2500-2690 MHz Bands, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 14165, 14183 ¶37 (2004).

Given that the 2.5 GHz transition may be well underway by the time new entrants at 2155 MHz and above are licensed,¹⁷ this imposes huge and unwarranted costs on new AWS licensees. To the extent that most BRS users appear to be using Channels 1 and 2 for uplinking end users to the network, no reason appears to exist why the user base using Channel 2 could not remain with the same equipment using BRS Channel 2 only. Indeed, the transition plan for BRS calls for Channels 1 and 2 to be relocated to non-adjacent spectrum blocks as well.¹⁸ As such, it is illogical for BRS incumbents to argue that non-adjacent spectrum for Channels 1 and 2 would not be “comparable” when that is exactly the final result expected for BRS operations.

D. T-Mobile Supports Continuation, But Not Expansion, of Incumbents’ Rights and Obligations Under the 1.9 GHz Rules

T-Mobile also supports the continuation of certain incumbents’ rights policies developed at 1.9 GHz, but not the expansion of those rights. As an initial matter, BRS incumbents argue that they should be given the ability to invoke a “right of return,” which would allow them to return to their previous facilities if they found their relocated facilities to be inadequate.¹⁹ Although T-Mobile supports the rights of BRS incumbents to receive adequate replacement facilities, a rule that allows BRS licensees to return after a year creates an unacceptable level of uncertainty for AWS licensees, BRS licensees, and the customers served by these licensees. For this reason, as observed by Verizon Wireless, the “right of return” was a right that was

¹⁷ If the Commission inadvisably determines that relocation of both Channel 1 and Channel 2 should be required, new entrants must share the costs associated with extending to 2496-2502 MHz should the BRS transition ever occur through the cost-sharing mechanism adopted by the Commission.

¹⁸ Channel 1 will be relocated to 2496-2502 MHz and Channel 2 will be relocated to 2618-2624 MHz. *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 and 2500-2690 MHz Bands, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 14165, 14183 ¶37 (2004).

¹⁹ *See* Comments of C&W Enterprises, Inc. at 5-6.

exercisable by the relocater, not the incumbent, at 1.9 GHz.²⁰ T-Mobile thus strongly objects to expanding incumbents' rights by creating a policy that allows them to arbitrarily impose additional costs on new entrants and disrupt needed services new entrants are providing to the public.

Second, BRS incumbents have also argued that the involuntary relocation policies should not be applied in the 2.1 GHz band, since that would require them to disclose customer lists.²¹ BRS incumbents also argue such an approach would give AWS licensees, who are possible competitors, a direct interface with their customers. T-Mobile has previously noted the competitive nature of the entities involved in this relocation, and supports the adoption of clear procedures to ensure that the business interests of all parties are protected by relocation policies.²² As a means of avoiding this conflict, T-Mobile urges the Commission to develop fixed financial amounts for moving customers and fixed time periods in which BRS incumbents can relocate their facilities. Such a system would allow BRS incumbents to protect their business interests by transitioning their own subscribers in the event of an involuntary relocation. AWS licensees would similarly be protected by being provided with certainty that relocation will actually occur, and further certainty regarding the cost of relocation.

Third, BRS incumbents have supported a proposal for self-relocation that would allow them to relocate their own facilities, absent any cost-supervision, and be reimbursed by new entrants.²³ This departs significantly from the self-relocation policies developed by the Commission for the 1.9 GHz relocation. First, self-relocators in the 1.9 GHz context were

²⁰ See Comments of Verizon Wireless at 7-8.

²¹ See Comments of Sprint Nextel Corporation at 24.

²² See Comments of T-Mobile USA, Inc. at 3.

²³ See Comments of BellSouth Corporation, BellSouth Wireless Cable, Inc. and South Florida Television, Inc. at 5-6.

allowed to relocate at any time, but the inherent risk of self-relocation was that their right to compensation was dependent upon whether a new entrant ever located its facilities in a manner that would interfere with the relocated system.²⁴ Second, the Commission at 1.9 GHz recognized that the self-relocation scenario posed the potential for excess cost expenditures, and the reimbursability of a self-relocator's costs was limited both by cost-sharing cap and the requirement to obtain a third party relocation cost study.²⁵ If self-relocation is permitted at 2.1 GHz, it should be subject to those same limitations.

II. THERE IS BROAD SUPPORT FOR THE ADOPTION OF COST-SHARING POLICIES BASED ON THE POLICIES IMPLEMENTED IN THE 1.9 GHz RELOCATION PROCEEDINGS

As previously noted, in order to achieve an efficient and equitable relocation process, both AWS licensees and BRS incumbents must be provided certainty regarding the costs of relocation. AWS licensees, particularly, must be assured of reimbursement by later entrants into the spectrum, or else they will have less incentive to immediately clear the spectrum for new and advanced technologies. T-Mobile therefore reiterates its strong support of the Commission's proposal to adopt cost-sharing methods based on the 1.9 GHz relocation cost-sharing model, with minor modifications to increase efficiency and equity.

Comments submitted in response to this *Fifth Notice* provide strong support for the cost-sharing policies advocated by T-Mobile. In particular, both CTIA – The Wireless Association and PCIA support the adoption of a clearinghouse as a means to ensure that costs are equitably shared and efficiently distributed.²⁶ Both of these comments also express support for the

²⁴ See 47 C.F.R. § 101.75.

²⁵ See 47 C.F.R. §§ 101.69-101-75.

²⁶ See Comments of PCIA; Comments of CTIA at 14.

improvements that can be achieved by providing greater clarity with respect to the definitions of compensable costs and when cost-sharing is triggered by new entrants.²⁷

III. 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. The comments submitted in this proceeding provide strong support for the Commission's proposal to accomplish this task by using the 1.9 GHz relocation proceeding as a model, and making minor modifications to increase efficiency and equity for AWS licensees and BRS incumbents. By adopting proposals that will provide certainty and clarity to all parties, the 2.1 GHz spectrum can be more rapidly deployed to provide consumers with advanced wireless services.

Respectfully submitted,

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²⁷ See Comments of CTIA at 9; Comments of PCIA at 4-8.