

March 28, 2006

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 Twelfth Street, SW  
Washington, DC 20554

*Re: 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 – WT Docket No. 03-66*

*Review of the Spectrum Sharing Plan Among Non-Geostationary Satellite Orbit Mobile Satellite Service Systems in the 1.6/2.4 GHz Bands - IB Docket No. 02-364*

*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 - ET Docket No. 00-258*

*NOTICE OF ORAL EX PARTE COMMUNICATION*

Dear Ms. Dortch:

Pursuant to Section 1.1206(b)(2) of the Commission's Rules, I am writing to advise the Commission that yesterday I met on behalf of the Wireless Communications Association International, Inc. ("WCA") with Barry Ohlson, Senior Legal Advisor to Commissioner Jonathan S. Adelstein. The purpose of the meetings was to discuss the above-referenced proceedings involving the rules governing the Broadband Radio Service ("BRS") and the Educational Broadband Service ("EBS"). The attached outline provides WCA's perspective on the key issues before the Commission and was distributed to Mr. Ohlson at the meeting.

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Pursuant to Section 1.1206(b) of the Commission's Rules, an electronic copy of this letter is being filed with the office of the Secretary. Should you have any questions regarding this presentation, please contact the undersigned.

Respectfully submitted,

*/s/ Paul J. Sinderbrand*

Paul J. Sinderbrand

Counsel for the Wireless Communications  
Association International, Inc.

Attachment

cc: Barry Ohlson

**WCA's PERSPECTIVE ON KEY ISSUES**  
**RECONSIDERATION OF *REPORT AND ORDER***  
**WT DOCKET NO. 03-66**

**LEASING ISSUES**

- The Commission should continue to rely on the *Secondary Market* rules to govern BRS/EBS leasing.
  - The only economic evidence in record establishes that even a 35 year maximum lease requirement could foreclose investment in some business plans.
  - Contractual negotiations are most efficient and effective means for addressing future EBS needs.
    - Proposed rule is so vague that it may effectively limit agreements to 15 years, undermining investment in band.
  - Existing agreements must be grandfathered.
  - No need established for filing of EBS leases, which would expose competitively sensitive information.
    - WCA does not oppose requiring lease applications to disclose total term.

**TRANSITION ISSUES**

- BTAs, rather than MEAs, should be used to guide transitions.
- Initiation Plan filing deadline should be extended to 30 months from effective date of new rules.
- If a licensee does not respond to a Pre-Transition Data Request within 21 days, the Proponent should be permitted to proceed without providing it with new downconverters, without transitioning video programming to MBS and without affording interference protection at its receive sites.
- MVPDs that were using more than 7 channels for the distribution of digitized programming as of 10/7/02 and that continue to do so at the time of a transition should be permitted to opt-out of the transition as of right. Analog system operators should be permitted to seek a waiver.
  - Analog MVPDs should have the option of returning LBS/UBS licenses for re-auction in exchange for auction winner funding digitization of continued video operations in MBS.
  - An alternative bandplan designating 2496-2500 MHz for relocating BRS Channel 1 and 2686-2690 MHz for relocation of BRS Channel 2 is necessary for opt-out markets.
- The first to file Initiation Plan should be the Proponent, who can then add Co-Proponents at its discretion.

- To expedite transitions and eliminate disputes, the Commission should adopt Safe Harbors #3 (Proponent can digitize or provide multiple MBS analog channels), #4 (addressing allocation of channels where two EBS licensees currently share a channel group) and #9 (dealing with point-to-point EBS stations) as proposed by WCA/NIA/CTN.
- If Commission retains rule requiring D/U ratios to be met during the transition, it should clarify that adjacent channel D/U benchmark is -10 dB and that Proponents can upgrade EBS receive sites to satisfy requirement as was permitted under prior rules.

### **REIMBURSEMENT OF PROPONENT'S TRANSITION EXPENSES**

- Reimbursement obligation should only attach once spectrum is used to provide commercial service.
- EBS and BRS licensees should be subject to reimbursement if they provide commercial service.
- Costs should be pooled for entire market area, rather than allocated on a channel-by-channel basis.
- Sharing should be based on MHz Pops, using MHz post transition and 2000 US census pop counts.

### **TECHNICAL ISSUES**

- The Commission should not return to the former broadcasting-based D/U interference protection model. Experience over the past 14 months shows that the new rules work – no interference has been reported by any EBS licensee.
- The Commission should clarify that the requirement of a 47 dB $\mu$ V/m maximum signal strength at a licensee's GSA boundary is measured over 5.5 MHz and that operations over different sized channels is to be adjusted by applying a factor of  $10 \log [(actual\ bandwidth\ in\ MHz)/(5.5\ MHz)]$ .
- A licensee should be required to meet the more stringent dual spectral mask for base stations ( $67 + 10 \log (P)$  measured 3 MHz and beyond inside the frequency block of the requesting licensee) upon request of any licensee with an overlapping GSA that uses a non-synchronized technology without awaiting the resolution of a documented complaint. Interference in this case is inevitable, and there is no need to wait for it to occur.
- The limit on out-of-band emissions for customer equipment must be revised so that the limit adopted for mobile digital stations also applies to fixed digital stations. However, special rules are required for certain fixed customer units that utilize outdoor antennas.
- The out-of-band emissions limits applicable to the MSS/BRS boundary must be revised to take into consideration the 1 MHz guardband at 2495-2496 MHz and to eliminate erroneous reference to documented interference complaints.
- Violations of the height-benchmarking rule should be cured immediately, without delay while awaiting action by a clearinghouse or otherwise.

**WCA's PERSPECTIVE ON KEY ISSUES**  
**SECOND REPORT AND ORDER ADDRESSING FNRPM**  
**WT DOCKET NO. 03-66**

**SUBSTANTIAL SERVICE**

- Part 27 “Substantial Service” test of Section 27.14 (“sound, favorable and substantially above the level of mediocre service which just might minimally warrant renewal”) should apply to assure regulatory parity with AWS and WCS.
  - Traditional Part 27 safe harbors should apply (4 links per million for point-to-point and 20% population coverage for point-to-multipoint).
  - Recently-adopted rural safe harbors should apply (at least one end of a permanent link in at least 20% of the “rural areas” within its licensed area if fixed, coverage of at least 75% of the geographic area of at least 20% of the “rural areas” within its service area if mobile).
  - To accommodate operators’ needs to cobble together spectrum from multiple sources, devote spectrum for guardband and accommodate anticipated growth in bandwidth needs, new safe harbor should provide that where a licensee demonstrates that its spectrum is licensed to or leased by the operator of a multichannel system comprising spectrum licensed under multiple call signs, that licensee should be deemed to have provided substantial service if the multichannel system, taken as a whole, satisfies the substantial service test.
  - To avoid retention of obsolete facilities, substantial service should be found where the licensee demonstrates that it met a safe harbor at any time during the license term, as opposed to just at renewal time.
- A BRS/EBS licensee should be required to demonstrate substantial service at license renewal, but no earlier than five years after its transition to the new bandplan has been completed. This acknowledges importance of transition to the deployment of new services and the inability of a licensee to fully control the transition process, while at the same time providing a fair opportunity for services to be deployed.

**AUCTION ISSUES**

- Before any spectrum is seized and re-auctioned, licensees should have a *limited* opportunity to self-transition. Self-transition option should only be available after the deadline for filing Initiation Plans, as earlier self-transitions will complicate Proponent-driven transition process.
- MVPDs should have the option of returning LBS/UBS licenses for re-auction in exchange for auction winner funding digitization of continued video operations in MBS.

**LICENSING IN THE GULF OF MEXICO**

- If the Commission adopts licensing rules for Gulf of Mexico despite lack of *any* interest from commenting parties, it must adopt WCA/NIA/CTN rules for assuring that Gulf operations do not interfere with land-based use along Gulf of Mexico.

**WCA's PERSPECTIVE ON KEY ISSUES**  
*ORDER ON RECONSIDERATION*  
IB DOCKET NO. 02-364

- The *Report and Order* in IB Docket No. 02-364 reallocated the 2496-2500 MHz band for use by BRS Channel 1 licensees upon relocation from 2150-2156 MHz to clear that spectrum for the upcoming Advanced Wireless Service auction. However, the band is highly encumbered, and as a result AWS auction winners will find it difficult to relocate BRS Channel 1 licensees there unless the following actions are taken on reconsideration.
- Adopt the SBE proposal for digitizing and relocating BAS channel A10 to spectrum below 2483.5 MHz.
  - WCA and SBE agree that BRS and BAS cannot coexist at 2495-2500 MHz.
  - Relocation of BAS also is necessary to accommodate Globalstar ATC.
  - Costs should be shared between Globalstar and AWS auction winners.
- Eliminate the co-primary allocation to Big LEO MSS.
  - WCA and Globalstar, the sole licensee of the 2.4 GHz band MSS spectrum, agree that cochannel, co-coverage sharing is not possible.
  - Globalstar proposal to limit BRS 1 use to Top 35 MSAs and to impose stringent technical requirements on use makes the band unusable for relocating BRS channel 1, which is licensed across virtually the entire country pursuant to auction and secondary market purchases.
  - 2483.5-2500 MHz band was intended for use by multiple Big LEO MSS applicants, and Globalstar has long been on notice that FCC might reclaim spectrum if there were only one remaining licensee in the 2.4 GHz MSS allocation.
- Impose a reasonable limit on the power of ISM devices within the 2496-2500 MHz band
  - Lack of any power ISM power limit makes cochannel sharing dangerous.
  - WCA has proposed use of Part 18 limits that current apply above 2500 MHz.
  - WCA proposal only applies to devices manufactured or imported 2 years after new rules.
  - NTIA study demonstrates that microwave oven vendors can readily meet WCA's proposal.

**WCA's PERSPECTIVE ON KEY ISSUES**  
*ORDER ON FIFTH NPRM*  
IB DOCKET NO. 00-258

**BRS CANNOT STAGNATE PENDING RELOCATION**

- Pending relocation, BRS system operators must be permitted to add subscribers and make system modifications necessary to accommodate growth
- Many BRS systems serve rural areas where potential subscribers lack alternative sources of broadband
- BRS systems have defined service areas. Thus, AWS can readily predict where its new operations may suffer interference from a growing BRS subscriber base and can relocate BRS systems beforehand if subscriber growth raises potential interference risk
- AWS can control increased costs by relocating BRS sooner rather than later

**RELOCATION TRIGGERS MUST PROTECT BRS INTERESTS**

- WCA and CTIA agree that involuntary BRS relocation should be required before any AWS base station is deployed that would have line-of-sight to a BRS base station if no agreement is reached during 3 year mandatory negotiation period
- WCA and CTIA also agree that AWS should be permitted to involuntarily relocate BRS at any earlier time, in its discretion if no agreement can be reached
- BRS should be permitted to self-relocate via initiation of involuntary relocation process
- In any event, BRS should be relocated within 10, or perhaps 15, years

**BRS MUST CONTROL ITS OWN RELOCATION**

- “Turn key” approach of *Microwave Relocation* rules cannot apply to consumer-based, point-to-multipoint service like BRS. WCA and CTIA agree that because of sensitive nature of BRS subscriber information, BRS operator must be responsible for implementing relocation

**BRS MUST BE MADE WHOLE**

- Absent agreement, AWS auction winners must advance all costs of relocating BRS 1/2 to comparable facilities in designated replacement spectrum
  - BRS licensees cannot reasonably estimate relocation costs 10-15 years in the future, and, consistent with a policy of making BRS whole, cannot be bound to recover only 110% of any estimate
  - As with 800 MHz transition, AWS auction winner should advance estimated costs, subject to true up process

- BRS provides estimate of costs of migrating to comparable facilities directly to appropriate AWS licensee. AWS licensee has 30 days to: (1) send BRS the funds; or (2) ask BRS for clarification of or revisions to those portions of the estimate with which it does not agree. If (2), BRS must respond within 10 business days, and AWS has 10 business days to send the funds requested, or take the matter to the Commission for resolution. Within 90 days of completion, BRS notifies AWS and provides a true up accounting, subject to verification process
- Comparable facilities must provide same coverage, throughput, reliability and operating costs
- Reimbursable costs must include internal costs, calculated per 800 MHz TA guidelines
- Costs for relocating BRS 1 must include costs of relocating BAS channel A10 from 2496-2500 MHz band designated for BRS 1 relocation
- **NO SUNSET IS APPROPRIATE**
  - A “sunset” of the obligation of AWS to fund relocation is inconsistent with objective of making BRS “whole”
  - Given that AWS has a 15 year substantial service deadline, and may satisfy that deadline without constructing facilities near rural BRS systems, there is no assurance that BRS 1/2 operations will be relocated within 10, or even 15, years