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March 29, 2006

Honorable Deborah Taylor Tate
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: *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*
WRITTEN EX PARTE COMMUNICATION

Dear Commissioner Tate:

According to reports in the trade press, the Commission will be considering at its April 12th open meeting the adoption of rules and policies governing the relocation of Broadband Radio Service ("BRS") operations from the 2150-2162 MHz band to identified spectrum in the 2496-2690 MHz band. As you know, Sioux Valley Wireless is an active user of the BRS spectrum at issue here, using the channels as part of our rural wireless broadband system to link over 2,400 consumer premises to our base stations. While we appreciate the Commission's interest in assuring that its upcoming Advanced Wireless Service ("AWS") auction succeeds, we fear that our ability to continue offering wireless broadband services (primarily to subscribers in South Dakota who do not have access to cable modem or DSL) is at substantial risk.

Sioux Valley Wireless has previously submitted a formal reply to the *Fifth Notice of Proposed Rulemaking,* and in February I traveled to Washington to meet with you and your colleagues to discuss our concerns. With a vote on the item approaching, I thought it would be helpful for me to identify our most serious concerns regarding this matter:

- Until relocated from 2150-2162 MHz, Sioux Valley Wireless and other BRS licensees must be permitted to add subscribers and make other system modifications necessary to accommodate growth.
- The "turn key" approach of the Commission's *Microwave Relocation* rules cannot apply to consumer-based, point-to-multipoint service like BRS. Even CTIA agrees that because of the sensitive nature of BRS subscriber information, BRS system operators must be responsible for implementing their own relocation at the expense of the applicable AWS auction winners.

- AWS auction winners must pay *all* of the costs of relocating BRS channel 1 and 2 operations to comparable facilities in the designated replacement spectrum. Comparable facilities must provide the same coverage, throughput, reliability and operating costs. Given that the BRS operator must perform its own relocation and will utilize extensive internal resources, reimbursable costs must include internal costs (just as 800 MHz band licensees receive internal costs as part of the rebanding of their spectrum). In addition, the AWS auction winners must be responsible for the costs of relocating BAS channel A10 from 2496-2500 MHz band designated for BRS channel 1 relocation in accordance with the proposal advanced by the Society of Broadcast Engineers.
- Because small operators such as Sioux Valley Wireless cannot afford to fund their own migration from the 2150-2162 MHz band (which will require not only new base station equipment, but new, professionally installed equipment at the location of every subscriber), the Commission should require that AWS auction winners advance the estimated costs of migration, subject to the true up process that the Wireless Communications Association International has proposed. This is similar to the process employed in connection with the 800 MHz rebanding. The sooner the AWS winners reimburse us for our system rebuilds, the better for all, as we are prepared to move, and we do not wish to add any more unnecessary expense to the relocation for either ourselves or the AWS winners.
- The Commission should reject the proposal that reimbursement be capped at 110% of a pre-auction estimate of relocation costs. BRS system operators cannot reasonably estimate today the relocation costs they will incur 10-15 years in the future (particularly as we grow our business during that period). The Commission has never required incumbents to make pre-auction binding estimates of relocation costs, rejecting similar proposals because auction participants are capable of performing their own due diligence. There is no reason to depart from that approach here.
- No "sunset" of the obligation of AWS to fund relocation should be adopted, as such a "sunset" is inconsistent with the 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 2150-2162 MHz operations will be relocated within 10, or even 15, years. The better course is for the Commission to do something similar to what it did in connection with the 800 MHz proceeding and mandate that relocation at the expense of the AWS auction winners be completed by a date certain, regardless of the state of AWS commercial deployment.
- Similar to what it has done in past involuntary relocations, the Commission should permit any BRS licensee to self-relocate via initiation of the involuntary relocation process at any time following the AWS auction. This will allow the BRS operator to more efficiently operate its business and reduce subscriber dislocation because of the involuntary relocation, and at the same time reduce the ultimate cost of migration to AWS auction winners. To relocate to new spectrum, we will have to construct a parallel set of base stations operating in the 2.5 GHz band and migrate customers one-by-one by installing new transceivers at their premises. If a BRS licensee can

commence the involuntary relocation process, it can construct the facilities soon after the auction, place all new subscribers on the new system and migrate existing customers whenever there are services calls. In the end, this will expedite the transition process, minimize inconvenience to subscribers, and minimize expenses for both us and the AWS auction winners. By permitting the BRS licensee to commence the relocation process, the Commission can assure that all of the protections built into the system for the benefit of incumbent and newcomer will apply to the self-migration process.

- The Commission should require that involuntary BRS relocation be completed before any AWS base station is deployed that would have line-of-sight to a BRS base station (assuming no agreement is reached during the 3 year mandatory negotiation period). The threat of interference to BRS comes not just from cochannel or first adjacent channel operations – *all of the technical evidence in the record establishes that any AWS operations poses a threat to BRS, no matter what AWS spectrum block is used.*

Once again, thank you for your interest in assuring that Sioux Valley Wireless and similarly situated licensees of BRS channels 1 and 2 are fully protected during this relocation process. Please feel free to call should you have any questions regarding our position on BRS relocation from 2150-2162 MHz.

Respectfully submitted,

Joel A. Brick

Joel Brick

cc: Aaron Goldberger
Office of the Secretary (via ECFS)