

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

In the Matter of)	
)	
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 RM-10586
)	
Part 1 of the Commission's Rules - Further Competitive Bidding Procedures)	WT Docket No. 03-67
)	
Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and the Instructional Television Fixed Service Amendment of Parts 21 and 74 to Engage in Fixed Two-Way Transmissions)	MM Docket No. 97-217
)	
Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Licensing in the Multipoint Distribution Service and in the Instructional Television Fixed Service for the Gulf of Mexico)	WT Docket No. 02-68 RM-9718

To: The Secretary
The Commission

PETITION FOR RECONSIDERATION

NY3G Partnership ("NY3G") by its attorneys hereby files this Petition for Reconsideration of the *Order* released on April 27, 2006 in the above-captioned rulemaking proceeding.¹ Specifically, NY3G seeks reconsideration of the Commission's decision to

¹ See *In the Matter of 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*, Order on Reconsideration and Fifth Memorandum Opinion and Order and Third Memorandum Opinion and Order and Second

establish the “split-the-football” approach as the default outcome when co-channel licensees have a service area overlap of greater than 50% and during the 90-day mandatory negotiation period are unable to reach a mutual agreement regarding co-channel operations. *See* 47 C.F.R. § 27.1216; *Order*, at ¶ 350.

In the *Order*, the Commission stated that where the overlap in service areas between co-channel licensees is 50% or less, the Commission would automatically apply the split-the-football approach to resolve mutual exclusivity. *See Order*, at ¶ 349. In the case where co-channel licensees have a greater than 50% overlap in service areas, the Commission conceded that “different treatment is warranted.”² The Commission’s “different treatment,” however, to require mandatory 90-day negotiations and to split-the-football if negotiations are unsuccessful, does not serve the public interest. In the case of New York, the adopted approach would create an exclusion zone at least 15.6 km wide, adversely affecting over seven million consumers and

Report and Order, FCC 06-46 (2006) (“*Order*”). The *Order* appeared in the Federal Register on June 19, 2006. *See* 71 FR 35178 (June 19, 2006).

² *Id.* at ¶ 350 (“Where there is a major overlap of service areas, splitting the football may no longer be the best solution for accommodating the needs of both [co-channel] licensees.”). The Commission did not explain the basis of its conclusion.

leave the remaining service areas commercially non-viable.³ This outcome would also stifle one of the few opportunities for competition in broadband wireless service in the market.⁴

NY3G, instead, proposes that the Commission adopt as a default a fair apportionment of the co-channel frequencies between the licensees, with the EBS licensee obtaining the high-power channel and one low-power channel and the BRS licensee obtaining two low-power channels. Such an approach better serves the public interest, eliminating co-channel interference in densely populated areas and promoting competitive wireless broadband service.

Respectfully submitted,

By: _____ /s/_____

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Dated: July 19, 2006

³ See, e.g., Letter to Marlene Dortch from Bruce Jacobs and accompanying engineering studies (May 31, 2005). The Commission's conclusion to the contrary in the *Order* was based on flawed technical assumptions made by TVC and Sprint Nextel in filings in this proceeding. See Letter to Marlene Dortch from Lawrence Krevor (October 27, 2005). Moreover, the *Order* ignores the undisputed fact that even accepting *arguenda* the unrealistic assumptions made by TVC and Sprint Nextel, there still would be an exclusion zone 2 km wide on each side of the border between licensees, which would preclude service on the F group channels to approximately 1.8 million consumers living in the affected area. See *Order*, at ¶ 353.

⁴ See, e.g., Letter to Marlene Dortch from Bruce Jacobs (November 2, 2005).