

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 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 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
)	
Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets)	WT Docket No. 00-230
)	

To: The Commission

**CONSOLIDATED OPPOSITION OF
LINE OF SITE, INC
TO PETITIONS FOR FURTHER RECONSIDERATION**

Pursuant to Section 1.429 of the Commission's rules, Line of Site, Inc. ("LOSI"), by its attorneys, hereby submits its Consolidated Opposition to the various Petitions for Further Reconsideration ("Petitions") filed in WT Docket 03-66 regarding the Commission's Order on Reconsideration in the above referenced matter.¹

¹ *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*

I. Introduction

LOSI was incorporated in 1983, and received FCC licenses for about a dozen BRS stations in various cities. Today, LOSI remains the licensee of four BRS stations.² LOSI's Las Vegas E-Group station possesses a service area that significantly overlaps the service area of a grandfathered educational station that operates on two E and two F Channels. Over the years LOSI has endeavored unsuccessfully to resolve its dispute with the educational licensee in order to fully serve the Las Vegas market.

II. Handling of Overlaps with Grandfathered EBS Licensees

On further reconsideration, NY3G Partnership ("NY3G") and NextWave Broadband, Inc. ("NextWave") took issue with the FCC's decision regarding how it would handle the resolution of substantial PSA overlaps between grandfathered EBS licensees operating on commercial spectrum and other nearby co-channel commercial stations.³ The Commission had stated that 50% or greater overlaps warranted different treatment than simply splitting the overlap geographically. Accordingly the FCC said it would require a 90 day mandatory negotiation between affected parties, and then if no resolution was reached it would simply split the overlap geographically.

Bands, Order on Reconsideration and Fifth Memorandum Opinion and Order and Third Memorandum Opinion and Order and Second Report and Order, FCC 06-46, released April 27, 2006 ("*Broadband Services Reconsideration Order*"). A summary of the *Broadband Services Reconsideration Order* was published in the Federal Register on June 19, 2006, 71 Fed. Reg. 35,178 (2006). Petitions for Further Reconsideration were filed by nine parties on July 19, 2006. Notice of these reconsiderations was issued by FCC Public Notice (Report No. 2783), released on July 27, 2006 and in the Federal Register on August 3, 2006, see 71 Fed Reg 44029 (2006). See Also underlying Report and Order ("*Broadband Services Order*") and Further Notice of Proposed Rulemaking ("*FNPRM*"), FCC 04-135 (rel. July 29, 2004), 19 FCC Rcd 14165 (2004). A summary of the *Broadband Services Order* was published in the Federal Register on December 10, 2004, 69 Fed. Reg. 72,020.

² Those stations include: Las Vegas, NV (WHT721), Orlando, FL (WHT731), Daytona Beach, FL (WHT761) and Montgomery, AL (WMH505).

³ See NY3G, Petition for Reconsideration, in WT Docket 03-66, filed July 19, 2006, at pp.2-3; NextWave Petition for Partial Reconsideration, in WT Docket 03-66, filed July 19, 2006, at pp. 12-14.

NY3G stated that such a procedure would not serve the public interest and would result in geographic exclusion zones on commercial channels in large urban areas like New York City, and instead suggested that the Commission simply adopt a “fair apportionment method” under which the number of affected channels would simply be divided between the parties, with the EBS licensee receiving the MBS channel as one of its apportioned channels. It was unclear whether NY3G also wished to do away with the negotiation period.⁴ NextWave, similarly concluded that the FCC’s methodology would not serve the public interest. However, instead of a simple channel apportionment NextWave would have the FCC engage in a complex analysis that would determine the population that each station would serve in the overlap area on all channels following a geographic split, and then would have the FCC apportion the overlap area by spectrum division in such a manner as to preserve each licensee’s population coverage rights.

LOSI finds itself in general agreement with NY3G’s approach. Ensuring that cities receive full coverage on each channel as originally intended, while protecting the interests of both commercial and educational licensees, strikes the best balance of all interests involved. In electing to permanently grandfather EBS stations on commercial spectrum, the FCC has not first elected to assess the licensee’s continued educational need for such channels, nor has the FCC saddled such educators with any special educational requirements for such stations outside the normal requirements for EBS stations. Thus, in forever denying commercial licensees the prospect of recovering such commercial spectrum, the Commission should at a

⁴ Under the Commission’s stated policy, there currently appears to be little value in the mandatory negotiation period. It is apparent that because the FCC has clearly stated its intention to simply divide the overlap on a geographic basis following an unsuccessful negotiation, there is little incentive for a party desiring a geographic split of the overlap to actively negotiate in good faith. All such party need do to achieve its desired result is to wait out the 90 day period.

minimum remain sensitive to the commercial interests of overlapping commercial stations whose PSAs covered key population centers and, but for such grandfathered EBS stations, would be in a position to fully serve such population centers from their commercial stations. As correctly noted by NY3G, the splitting of significant overlaps geographically will in many cases result in divided or fractional service to such key population centers with commercial licensees thereby being excluded from certain geographic areas on valuable commercial channels.⁵ Addressing significant overlap situations by dividing channels, rather than the geographic overlap itself would most fairly ensure each party involved full coverage of its service area on at least some channels.

Additionally, LOSI believes that the Commission should also require the licensees to engage in assignments to maximize and preserve the overall population coverage existing today on each channel, thereby providing each licensee with the best resolution possible under the circumstances. If, for example, an EBS licensee were to retain the MBS E4 channel, the overlapping commercial licensee should be required to assign its E4 channel authorization to such licensee, with the combined coverage area of the two E4 channels becoming the EBS station's new E4 service area. In this manner, the EBS licensee would not only serve the overlap area on such channel in its entirety, but would also include the remainder of the area covered by both stations.

LOSI does not see the wisdom in NextWave's methodology. Under such an approach it appears that only the overlap is assessed, divided, and its spectrum apportioned. Under this method, a licensee might have all four channels in its non overlapping area but only a

⁵ Additionally, in at least one instance of which LOSI is aware of, a commercial station and grandfathered station completely overlap. In such a situation not only would the population center be split in half, but the FCC would have the difficult prospect of figuring out the orientation of the bisecting line that would create the geographic split.

fractional channel within the overlap area. Such a solution would necessitate the licensing of apportioned overlap areas under new separate call signs, and could ultimately lead to confusion.

LOSI would also request that if the Commission elects to retain the mandatory negotiation period that it provide parties with some guidance as to what is expected from the parties during and following the negotiation period. For example, the Commission should establish: a reporting requirement on the results of such negotiations; a mechanism for FCC approval of negotiated settlements; a timeframe and mechanism for the filing of applications needed to implement a negotiated settlement; a mechanism for Commission intervention where a party refuses to negotiate; penalties for parties refusing to negotiate; and dispute resolution procedures.

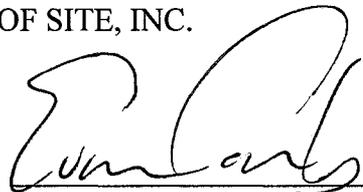
III Conclusion

LOSI respectfully requests that the Commission reconsider and clarify its Broadband Services Reconsideration Order and the Rules adopted thereby in accordance with the discussion set forth herein.

Respectfully submitted,

LINE OF SITE, INC.

By:



Evan D. Carb
RJGLaw LLC
1010 Wayne Avenue
Suite 950
Silver Spring, MD 20910
(301) 589-2999

Its Attorneys

August 18, 2006

CERTIFICATE OF SERVICE

I, Norman Liu, hereby certify that copies of the foregoing Consolidated Opposition of Line of Site, Inc. to Petitions for Further Reconsideration were served this 18th day of August, 2006 on the following parties via electronic mail at the following addresses:

Daniel Gonzalez
Office of Chairman Kevin J. Martin
Federal Communications Commission
445 12th St., SW
Room 8-B201
Washington, D.C. 20554
Daniel.Gonzalez@fcc.gov

Barry Ohlson
Office of Commissioner Adelstein
Federal Communications Commission
445 12th St., SW
Room 8-C302
Washington, D.C. 20554
Barry.Ohlson@fcc.gov

Aaron Goldberger
Office of Commissioner Deborah T. Tate
Federal Communications Commission
445 12th St., SW
Room 8-B115
Washington, D.C. 20554
Aaron.Goldberger@fcc.gov

Catherine W. Seidel, Acting Bureau Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th St., SW
Room 3-C252
Washington, D.C. 20554
Cathy.Seidel@fcc.gov

Jessica Rosenworcel
Office of Commissioner Michael J. Copps
Federal Communications Commission
445 12th St., SW
Room 8A-302
Washington, D.C. 20554
Jessica.Rosenworcel@fcc.gov

John Schauble
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th St., SW
Room 4-C336
Washington, D.C. 20554
John.Schauble@fcc.gov

Dana B. Schaffer
Office of Commissioner Robert M.
McDowell
Federal Communications Commission
445 12th St., SW
Room 8-A204
Washington, D.C. 20554
Dana.Schaffer@fcc.gov

D'wana Terry, Associate Bureau Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th St., SW
Room 4-C321
Washington, D.C. 20554
Dwana.Terry@fcc.gov

Charles Oliver
Public Safety and Private Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th St., SW
Room 3-C124
Washington, D.C. 20554
Charles.Oliver@fcc.gov

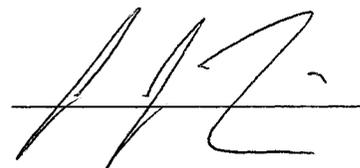
Joel Taubenblatt, Division Chief
Broadband Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th St., SW
Room 4A260
Washington, D.C. 20554
Joel.Taubenblatt@fcc.gov

Nancy Zaczek
Public Safety and Private Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th St., SW
Room 3-C124
Washington, D.C. 20554
Nancy.Zacek@fcc.gov

Stephen Zak
Public Safety and Private Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th St., SW
Room 3-C124
Washington, D.C. 20554
Stephen.Zak@fcc.gov

Andrea Kelly
Auctions and Industry Analysis Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th St., SW
Room 4-A760
Washington, D.C. 20554
Andrea.Kelly@fcc.gov

Gary Michaels
Auctions and Industry Analysis Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th St., SW
Room 4-A760
Washington, D.C. 20554
Gary.Michaels@fcc.gov

A handwritten signature in black ink, appearing to be 'GM', written over a horizontal line.