

**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
)	
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

To: The Commission

**REPLY TO CONSOLIDATED OPPOSITION OF LINE OF SITE, INC. TO
PETITIONS FOR FURTHER RECONSIDERATION
CATHOLIC TELEVISION NETWORK AND NATIONAL ITFS ASSOCIATION**

The Catholic Television Network ("CTN") and the National ITFS Association ("NIA"), by their attorneys, hereby submit this Reply to Consolidated Opposition of Line

of Site, Inc. to Petitions for Further Reconsideration (“LOSI Opposition”) filed on August 18, 2006 with respect to the *Order on Reconsideration and Fifth Memorandum Opinion and Order and Third Memorandum Opinion and Order and Second Report and Order* (“2006 Order”) in the above-captioned matter.¹ Although titled an opposition, Line of Site, Inc. (“LOSI”) generally supports a new proposal made by NY3G Partnership (“NY3G”) in its petition for reconsideration of the 2006 Order concerning grandfathered Educational Broadband Service (“EBS”) and Broadband Radio Service (“BRS”) licensees with overlapping service areas. Yet, neither LOSI nor NY3G have raised new arguments or provided any compelling reason for the Commission to overturn the decision it has already made after a full consideration of the record.

I. Grandfathered E and F Group Licensees

On August 18, 2006, CTN and NIA opposed the proposal made by NY3G on reconsideration concerning situations where grandfathered E and F group EBS licensees have service area overlaps of greater than fifty percent with co-channel BRS licensees.² NY3G proposed that, in those circumstances, the Commission should assign the EBS licensee the MBS channel and one UBS channel (NY3G did not specify which of the three UBS channels), and the BRS licensee two UBS channels.³ CTN and NIA continue to support the Commission’s decision, which followed a thorough consideration of this matter on the record, to provide for a 90-day mandatory negotiation period between

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 Bands*, Order on Reconsideration and Fifth Memorandum Opinion and Order and Third Memorandum Opinion and Order and Second Report and Order (“2006 Order”), 21 FCC Rcd 5606 (2006).

² Catholic Television Network and National ITFS Association Opposition to Petitions for Reconsideration filed August 18, 2006 at 2-3.

³ NY3G Partnership Petition for Reconsideration filed July 19, 2006 at 3.

grandfathered EBS licensees and BRS licensees with overlapping areas of greater than fifty percent.⁴ If those licensees do not reach an agreement during the 90-day period, the Commission will “split the football on its own accord.”⁵

LOSI states it is “in general agreement with NY3G’s approach” to divide the channels.⁶ Yet, the Commission already has considered and rejected NY3G’s proposal to mandate a division of the channels between the licensees.⁷ Although NY3G modifies its proposal on reconsideration, and LOSI supports the proposal, NY3G is still attempting to divide the channels for all grandfathered EBS and BRS licensees with overlaps of more than fifty percent in a way that will benefit NY3G. In the *2006 Order*, the Commission acknowledged that overlapping grandfathered EBS and BRS licensees should be afforded flexibility to mutually accommodate each others’ communications requirements.⁸ Thus, the Commission correctly determined that the parties should negotiate a solution that will work best for their situation, with the Commission acting as the fail-safe in the event the negotiations do not produce a solution within a limited 90-day timeframe.⁹

⁴ *2006 Order* at ¶ 350, 21 FCC Rcd at 5750.

⁵ *Id.*

⁶ NY3G and LOSI still do not define the exact UBS channels that each licensee will have, leaving the assignment of channels open to dispute under their proposal.

⁷ NY3G originally proposed that the EBS licensee would have only the MBS channel, and the BRS licensee would have all three UBS channels. *See 2006 Order* at ¶ 352, 21 FCC Rcd at 5750-5751.

⁸ *Id.* at 5750-5751. *See In the Matter of Amendment of Parts 2, 21, 74 and 94 of the Commission’s Rules and Regulations in regard to frequency allocation to the Instructional Television Fixed Service, the Multipoint Distribution Service, and the Private Operational Fixed Service*, GN Docket No. 80-112, CC Docket No. 80-116, Report and Order, 94 FCC 2d 1203 (1983).

⁹ The licensees could decide to split the channels as NY3G proposes or in another manner, or they could decide to split the overlapping service area on a geographic basis, or some combination thereof. Given the options, and the differing needs of all licensees, the Commission could not equitably mandate a split of the channels without allowing the licensees the chance to “form unique solutions” that take “into account the special technological needs of each party.” *See 2006 Order* at ¶ 354, 21 FCC Rcd at 5751.

LOSI claims that splitting the football may result in the “commercial licensees. . . being excluded from certain geographic areas on valuable commercial channels.”¹⁰ LOSI does not explain how that result is different from all other co-channel licensees that must split their overlapping service areas under the Commission’s rules. Furthermore, LOSI’s argument is based on what the Commission has already called an “unwarranted assumption” that the EBS licensee will not utilize the UBS channels to provide valuable services.¹¹

Finally, LOSI proposes that the Commission should adopt a series of requirements related to the 90-day negotiation period. Some of these requirements, such as “Commission intervention where a party refuses to negotiate” and “penalties for parties refusing to negotiate,” could lead to disputes as to when a party determines the other party is “refusing” to negotiate. Other requirements, such as reporting on the negotiation results and mechanisms for filing applications, are unnecessary as the parties reaching a negotiated solution will of necessity file applications with the FCC if required to implement the solution. CTN and NIA believe the Commission has already provided a clear course of action for the parties to follow.

¹⁰ LOSI Opposition at 4.

¹¹ *See 2006 Order* at ¶ 352, 21 FCC Rcd at 5751. It is unclear whether LOSI is relying on NY3G’s argument that splitting the football with a grandfathered EBS licensee will create an “exclusion zone” where neither licensee could provide service. That theory was widely discredited in the record of the *2006 Order*, and the Commission has already considered and rejected it. The Commission also found that any such “exclusion” problem would not be unique to the grandfathered EBS E and F channels. *See 2006 Order* at ¶ 353, 21 FCC Rcd at 5751.

II. Conclusion

CTN and NIA urge the Commission to retain the rules and policies adopted in the *2006 Order* pertaining to the resolution of grandfathered EBS and BRS licensees with overlapping service areas.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Donna A. Balaguer, hereby certify that copies of the foregoing REPLY TO CONSOLIDATED OPPOSITION OF LINE OF SITE, INC. TO PETITIONS FOR FURTHER RECONSIDERATION have been served via first class mail this 28th day of August, 2006 on the following:

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