

**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

**SUPPLEMENT TO PETITION FOR RECONSIDERATION**

NY3G Partnership ("NY3G"), by its attorneys, hereby files this Supplement in the above-captioned rulemaking proceeding.<sup>1</sup> NY3G requests that the FCC clarify or amend section 27.1216 of its rules, 47 C.F.R. § 27.1216, to permit adjacent co-channel BRS and EBS licensees,

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<sup>1</sup> 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 Report and Order, 21 FCC Rcd 5606 (2006) ("Order").

upon application to and approval by the FCC, to exchange or transfer service area territory between one another in order to facilitate intersystem coordination of co-channel operations or to reduce or mitigate the harmful effects of co-channel interference.<sup>2</sup>

Specifically, NY3G requests that 47 C.F.R. § 27.1216 be amended by adding a new paragraph (c) to read as follows:

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(c) If adjacent co-channel licensees mutually agree to exchange or transfer service area territory between one another (i) to facilitate intersystem coordination of co-channel operations between their respective systems, or (ii) to reduce or mitigate the harmful effects of co-channel interference between their systems, then upon their joint application to the Commission for such exchange or transfer and the Commission's approval, each co-channel license will be modified accordingly.

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Exhibit A, attached hereto, contains the proposed section 27.1216 in its entirety.

The existence of co-channel licensees serving adjacent geographic areas with different types of licenses (BRS and EBS) represents an unusual historical anomaly created in 1983 that is unique to these services.<sup>3</sup> The service areas for such adjacent licensees are often arbitrary, and do not reflect natural dividing lines between population centers, highway patterns, and other determinants of the market demand for BRS or EBS service, particularly when the adjacent licensees are subject to the FCC's use of "split the football" techniques to determine service area boundaries.

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<sup>2</sup> Although co-channel licensees could negotiate without such a rule, the different service classifications and requirements (i.e. BRS and EBS) of the licenses and the rigidity of new GSA boundaries may prevent the co-channel licensees from reaching optimal solutions.

<sup>3</sup> *In the Matter of Amendment of Parts 2, 21, 74 and 94 of the Commission's Rules and Regulations*, 94 FCC 2d 1203 (1983).

No party would be prejudiced and the public interest would be better served by grant of this request. Among other things, this proposal would facilitate resolution of disputes and permit licensees to better match service areas with public demand for such services.

Respectfully submitted,

By: \_\_\_\_\_ /s/

Bruce D. Jacobs  
Tony Lin  
Pillsbury Winthrop Shaw Pittman LLP  
2300 N St. NW  
Washington, DC 20037-1128

*Counsel for NY3G Partnership*

Dated: December 11, 2006

## CERTIFICATE OF SERVICE

I hereby certify that a copy of this Supplement was sent by first-class mail, postage prepaid on December 11, 2006 to the following:

Paul J. Sinderbrand  
Robert D. Primosch  
Nguyen T. Vu  
Wilkinson Barker Knauer, LLP  
2300 N Street, NW, Suite 700  
Washington, DC 20037

Joseph A. Belisle  
Leibowitz & Associates, PA  
One SE 3<sup>rd</sup> Avenue, Suite 1450  
Miami, FL 33131

Edwin N. Lavergne  
Fish & Richardson P.C.  
1425 K Street, NW, Suite 1100  
Washington, DC 20005

Stephen Coran  
Rini Coran, PC  
1615 L St. NW, Suite 1325  
Washington, DC 20036

Bennett L. Ross  
BellSouth Corporation  
1133 21<sup>st</sup> St. NW, Suite 900  
Washington, DC 20036

Lawrence R. Krevor  
Trey Hanbury  
Nicole McGinnis  
Sprint Nextel Corporation  
2001 Edmund Halley Drive  
Reston, VA 2191

Evan D. Carb  
RJGLaw LLC  
1010 Wayne Avenue, Suite 950  
Silver Spring, MD 20910

Todd D. Gray  
Dow Lohnes PLLC  
1200 New Hampshire, NW, Suite 800  
Washington, DC 20036

George Alex  
NextWave Broadband Inc.  
75 Holly Hill Road, Suite 200  
Greenwich, CT 06830

\_\_\_\_\_  
/s/

Renee Williams

## Exhibit A

### **§ 27.1216 Grandfathered E and F group EBS licenses.**

(a) Except as noted in paragraph (b) of this section, grandfathered EBS licensees authorized to operate E and F group co-channel licenses are granted a geographic service area (GSA) on July 19, 2006. The GSA is the area bounded by a circle having a 35 mile radius and centered at the station's reference coordinates, and is bounded by the chord(s) drawn between intersection points of that circle and those of respective adjacent market, co-channel licensees.

(b) If there is more than 50 percent overlap between the calculated GSA of a grandfathered EBS license and the protected service area of a co-channel BRS license, the licensees shall not be immediately granted a geographic service area. Instead, the grandfathered EBS license and the co-channel BRS licensee must negotiate in good faith to reach a solution that accommodates the communication needs of both licensees. If the co-channel licensees reach a mutually agreeable solution on or before October 17, 2006, then the GSA of each co-channel license shall be as determined pursuant to the agreement of the parties. If a mutually agreeable solution between co-channel licensees is not reached on or before October 17, 2006, then each co-channel licensee shall receive a GSA determined pursuant to paragraph (a) of this section and §27.1206(a).

(c) If adjacent co-channel licensees mutually agree to exchange or transfer service area territory between one another (i) to facilitate intersystem coordination of co-channel operations between their respective systems, or (ii) to reduce or mitigate the harmful effects of co-channel interference between their systems, then upon their joint application to the Commission for such exchange or transfer and the Commission's approval, each co-channel license will be modified accordingly.