

May 6, 2008

Ms. Marlene H. Dortch  
Secretary  
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*  
*NOTICE OF ORAL EX PARTE COMMUNICATION*

Dear Ms. Dortch:

I am writing pursuant to Section 1.1206(b)(2) of the Commission's Rules to notify the Commission that earlier today I met on behalf of the Wireless Communications Association International, Inc. ("WCA") with Julius Knapp, Bruce Romano, Jamison Prime, Geraldine Matise, Ira Keltz and Patrick Forster of the Office of Engineering and Technology to discuss the issues raised by WCA's June 23, 2006 Petition for Reconsideration of the *Ninth Report and Order* in the above-referenced proceeding. During the course of that meeting, I reiterated WCA's proposals for changes to the current rules and policies regarding the involuntary relocation of licensees on Broadband Radio Service channels 1 and 2 from the 2150-2162 MHz band. Copies of the attached materials were distributed at the meeting.

Pursuant to Sections 1.49(f) and 1.1206(b) of the Commission's Rules, a copy of this letter is being filed electronically with the Office of the Secretary. Should you have any questions regarding this presentation, please contact the undersigned.

Respectfully submitted,

*/s/ Paul J. Sinderbrand*

Paul J. Sinderbrand

Attachment



**The Relocation Of BRS  
Channels 1 and 2: Assuring  
Fair Treatment of BRS  
System Operators**

**Presentation to OET**

**ET Docket No. 00-258**

**May 6, 2008**

## Background of BRS Channels 1 and 2

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- BRS 1/2 are being relocated to accommodate designation of 2110-2155 MHz for downstream AWS and reallocation of 2155-2170 for undetermined new uses
- At issue are systems in approximately 15 markets where small operators utilize BRS 1 and/or 2 for the provision of upstream communications as part of a broadband offering in accordance with Commission's prior vision for the band
- June 2004 *Report and Order* in WT Docket No. 03-66 designated specific replacement spectrum at 2.5 GHz for migrating BRS 1/2 licensees

## The *Ninth R&O* in ET Docket 00-258

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- April 21, 2006 *Ninth R&O* established rules to govern the involuntary relocation of BRS 1/2 to 2.5 GHz
- BRS licensees have not resisted involuntary relocation, but have sought rules under which they are not materially worse off
- *Ninth R&O* promises that viability of existing operations “will not be threatened”
- However, rules adopted in *Ninth R&O* do not assure continuity of important services being offered
- Failure to modify those rules will sound death knell for some existing operations

# The WCA Petition For Reconsideration

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- BRS licensees must be compensated for throughput upgrades
- Self-relocation must be allowed
- Rules must be revised to assure BRS licensee greater control over migration
- Internal costs must be recoverable
- AWS pre-payment must be required
- AWS licensees must prior coordinate with non-cochannel BRS to avoid interference
- AWS must reimburse Proponent
- AWS must fund BAS relocation

# **BRS Systems Must Expand Capacity To Meet Consumer Demand**



- AWS relocation obligation runs 15 years
- Consumers demand increased throughput over time
- Rules exclude from “comparable facilities” any increase in throughput over this 15 year period prior to migration
- Equipment used to increase throughput is often band-specific and cannot be used at 2.5 GHz
- Rule cannot be squared with FCC promise to “minimize economic impact on licensees” of BRS 1/2
- AWS can minimize uncertainty by relocating BRS sooner rather than later

## **Lack of Self-Relocation Option Exacerbates Harm**

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- *Emerging Technologies* policy has provided incumbent with right to self-relocate, and point-to-point microwave users in AWS band can self-relocate
- Self-relocation will mitigate potential harm to BRS by allowing BRS earlier, and better, control
- While FCC has correctly recognized that caps on reimbursement would be difficult to calculate, other approaches can assure costs are reasonable
  - *Ninth R&O* ignored WCA proposal for prior coordination and process to avoid disputes
- Minimizes burden on consumers – BRS can reduce migration-related house calls by relocating whenever a service call is otherwise required

# Responsibilities for Migration Must Be Revisited

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- *Ninth R&O* acknowledges need for “special provisions to protect the BRS licensees’ legitimate commercial interests” from AWS misconduct
- *Ninth R&O* continues to allow AWS to select media, despite allocation of replacement spectrum at 2.5 GHz
  - FCC claimed BRS 1/2 would benefit by moving to 2.5 GHz with rest of channels
  - Why should consumers who choose BRS over cable or DSL be forced on to one of those systems by AWS?
- To protect relationship between BRS and its subscribers, *Ninth R&O* removes AWS from process of replacing subscribers’ equipment, *but fails to address costs in a manner fair to BRS!*

# **BRS Should Not Have To Bear Costs Of Relocating Itself**



- *Ninth R&O* denies BRS recovery of internal costs associated with migrating subscribers
  - *Emerging Technologies* decisions are distinguishable because this is first time FCC has taken portion of migration obligation from newcomer due to potential for it to engage in anti-competitive activities
- FCC should rely on 800 MHz rebanding precedent
  - Incumbents control their own migration within limits established by FCC
  - Documented internal costs are recoverable
  - Licensees do not have to foot the bill and then seek reimbursement
  - Problems at 800 MHz are unlikely here because of limited pool of BRS systems being relocated

# WCA Proposed Funding Process

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- If BRS chooses to self-relocated, or if negotiations do not result in voluntary relocation:
  - BRS provides estimate of costs of migrating to comparable facilities directly to appropriate AWS licensee.
  - AWS licensee has 30 days to: (1) send BRS the funds; or (2) ask BRS for clarification of or revisions to those portions of the estimate with which it does not agree. If (2), BRS must respond within 10 business days, and AWS has 10 business days to send the funds requested, or take the matter to the Commission for resolution.
  - Migration must be completed within 24 months of funding
  - Upon completion, BRS notifies AWS and within 90 days provides a true up accounting, subject to verification process.

# Protection Against Interference

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- *Emerging Technologies Order* commits to protecting incumbents against interference pending relocation.
- *Ninth R&O* adopts WCA proposal for addressing cochannel interference.
- Because AWS will be downstream, and BRS 1/2 are upstream, there is no serious dispute that adjacent channel interference to BRS base station is a potential risk
  - $43+10 \log(p)$  OOBE mask for AWS-1 is appropriate once BRS is relocated, but inadequate now

# Protection Against Interference

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- *Ninth R&O* acknowledges risk, and requires AWS to cure any actual interference caused to BRS (§ 27.1255(b))
- Rule requires consumers to suffer actual interference, go without service while BRS operator tracks down problem and AWS competitor takes its time to effectuate cure
  - Comparable BRS rules require cure within 24 hours
- WCA proposes that AWS engage in the same §101.103(d) prior notice and response coordination with BRS that it must conduct with point-to-point microwave
- In WT Docket No. 02-353 interpreted *Ninth R&O* as requiring curative steps “prior to operating a base station that would cause harmful interference”

## Other Issues

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- AWS should reimburse 2.5 GHz band transition Proponent for *pro rata* share of transition costs.
- Relocation of BAS channel A10 from 2496-2500 MHz as proposed by SBE should be completed at the expense of the AWS auction winner.