

**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 )

To: The Commission

**COMMENTS OF JAMES MCCOTTER**

James McCotter ("McCotter") hereby offers these comments in support of an enlarged period of time to build out the BRS systems authorized as a result of Auction 86. McCotter was a member of the Ad Hoc BRS Applicants Association (the "AHBA Association"), which filed comments in the Commission's proceeding establishing auction procedures.

1. The AHBA Association had urged the Commission to allow auction winners a full ten years to build out their systems. A ten-year time frame is consistent with the time frames allotted to other broadband licensees who are similarly situated to BRS licensees: LMDS, WCS, and AWS. In each of these services, licensees were afforded a full ten years to build out, and there is no reason at all why new licensees in the BRS service should not be afforded a similar period of time. Simple consistency would argue that similar services should be similarly treated.<sup>1</sup>

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<sup>1</sup> The 700 MHz service cited by the Commission in the NPRM presents a different situation. The 700 MHz licenses were auctioned for the most part over vast areas where there is a serious risk that large portions of the service areas – particularly the rural and sparsely populated areas – would be left unserved.

2. Typically, the Commission has relied on the blunt instrument of market forces to impel licensees to build out promptly, and those imperatives apply strongly here. Bidders in the upcoming auction who have to pay hard cash for their licenses will have every incentive to develop their spectrum as soon as possible in order to start to recover a return on their auction investments. Warehousing in a context where hundreds of thousands or millions of dollars will have been spent on useful spectrum would be economically foolish and is highly unlikely.

3. At the same time, the Commission has recently indicated strong concern that spectrum for broadband is likely to be scarce in the years ahead. (*Comments Sought on Spectrum for Broadband*, DA 09-2100, rel. Sept. 23, 2009) In an environment where spectrum is scarce, it again seems highly unlikely that licensees would have any incentive to do anything but get their systems operational as soon as possible. The imperatives will drive licensees to get into service sooner rather than later. All of these factors have traditionally and with consistent success been used by the Commission to ensure that spectrum is not warehoused.

That being the case, one might ask, why would licensees need more than four years to build out their systems? There are a number of factors that come into play here that must weigh on the mind of any prospective bidder in the auction. First, as the Commission has recognized, this spectrum is highly encumbered in many markets. The build-out process will be very different from the "greenfield" situation that most new FCC licensees (including 700 MHz licensees) start out with. Typically there is a blank slate on which to design a network – not a rabbit warren of different licensees and channel sizes in each market that must be circumvented, avoided, negotiated with, and designed around. Simply getting a system up and going without stepping on the toes of adjacent carriers will be a formidable task which will complicate build-outs significantly.

Equally importantly, this auction occurs at a point where the broadband industry is in a highly transitional state. The Commission will be adopting a broadband plan next year which will certainly have a great effect on the use and timing of use of all broadband spectrum in the U.S., but right now nobody knows what that plan will entail. Moreover, the technology driving the broadband sector is changing very rapidly. As 4G platforms become more widely accepted, we anticipate that systems will be upgrading to those high speed, feature rich environments in the very period in which build out of these systems is likely to occur. Nobody wants to be in the position of having to build out a network to meet FCC requirements which is obsolete almost as soon as it is built. (The Commission itself recognized in granting WCS licensees additional time to construct and allowing incumbent BRS licensees to go dark that no purpose was served by compelling the build out or operation of facilities that were technologically backward and served no purpose except to meet FCC requirements.) While we are not sure that the industry will develop in exactly this way, it is surely true that the next few years will be transitional ones for the equipment and software community and there may well be valid technical reasons to hesitate before committing to a particular platform, equipment vendor, or technological path. This decision should be informed by considering what path is most likely to serve the needs of the public most efficiently and economically – not by an artificial regulatory deadline.

For all of the above reasons, McCotter suggests that the build-out period should be six years in order to take into account the variables and uncertainties that are likely to impact these frequencies over the next few years. Six years should provide a sufficient amount of time for 4G issues to be resolved, equipment to become readily and widely available at reasonable prices, and for the broadband plan to reach the implementation stage without squeezing applicants in an

unrealistic bind. At the same time, the strong financial and market imperatives that incent licensees to build as quickly as possible will continue to operate such that the FCC deadline will hopefully become a moot point.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Donald J. Evans", written over a horizontal line.

Donald J. Evans

Counsel for James E. McCotter

Date: Oct. 9, 2007