

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

In the Matter of	)	
	)	
Amendment of Parts 1, 21, 73, 74 and 101 of the	)	WT Docket No. 03-66
Commission’s Rules to Facilitate the Provision of Fixed	)	RM-10586
and Mobile Broadband Access, Educational and Other	)	
Advanced Services in the 2150-2162 and 2500-2690	)	
MHz Bands	)	

**COMMENTS**

The Wireless Communications Association International, Inc. (“WCAI”), by its attorneys and pursuant to Section 1.415 of the Commission’s Rules, hereby submits its comments in response to the *Third Further Notice of Proposed Rulemaking* (the “*Third FNPRM*”) in the above-captioned proceeding.<sup>1</sup> For the reasons set forth below, WCAI urges the Commission to adopt the revisions to Section 27.14(o) of the Rules – the Broadband Radio Service (“BRS”) substantial service requirement – that are proposed in the *Third FNPRM*.<sup>2</sup>

**I. THE COMMISSION SHOULD MODIFY SECTION 27.14(O) TO REQUIRE SUBSTANTIAL SERVICE WITHIN FOUR YEARS OF ISSUANCE OF A NEW BRS LICENSE.**

The *Third FNPRM* proposes to revise Section 27.14(o) of the Commission’s Rules to provide those who secure new BRS licenses in upcoming Auction No. 86, as well as in any future re-auction of BRS licenses, with a period of four years from license issuance to

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<sup>1</sup> 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, *Fifth Memorandum Opinion and Order and Third Further Notice of Proposed Rulemaking*, FCC 09-70, ¶¶ 20-28 (rel Sept. 11, 2009)[“*Third FNPRM*”].

<sup>2</sup> The *Third FNPRM* makes clear that although Section 27.14(o) also applies to Educational Broadband Service (“EBS”) licensees, it “will address the performance requirements applicable to EBS licenses granted in the future in the proceeding addressing the licensing of unassigned EBS spectrum.” *Id.* at ¶ 27 n. 98. As such, WCAI does not here address the substantial service deadline that should be applied to new EBS licenses.

demonstrate substantial service.<sup>3</sup> Although WCAI had previously suggested requiring licensees to make the requisite showing more quickly,<sup>4</sup> WCAI believes that the proposed four-year period for demonstrating substantial service represents a reasonable compromise among the disparate views that were expressed in response to the Commission's *Public Notice* soliciting comment on the procedures to be applied to Auction No. 86.<sup>5</sup>

WCAI is particularly pleased that the Commission has not proposed to afford new BRS licensees the ten-year period for demonstrating substantial service that had been suggested by one party to the Auction No. 86 proceeding.<sup>6</sup> As is recognized in the *Third FNPRM*, the Commission's objective in setting a deadline for substantial service showings is to "ensure that spectrum is promptly placed in use while allowing licensees a reasonable opportunity to construct."<sup>7</sup> This requires a delicate balancing that will result in different deadlines from service to service and even from time to time within the same service.<sup>8</sup> The Commission has correctly concluded that allowing ten years for submission of substantial service showings "is excessive and could lead to spectrum being unused for an inordinately

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<sup>3</sup> See *id.* at ¶ 26.

<sup>4</sup> See Reply Comments of the Wireless Communications Association International, Inc., AU Docket No. 09-56 (filed May 29, 2009) ["WCAI Reply Comments"].

<sup>5</sup> See Auction of Broadband Radio Service (BRS) Licenses Scheduled for October 27, 2009 Comment Sought on Competitive Bidding Procedures for Auction 86, *Public Notice*, 24 FCC Rcd 4605 (WTB 2009).

<sup>6</sup> See Comments of SAL Spectrum, LLC, AU Docket No. 09-56, at 2-3 (filed May 15, 2009).

<sup>7</sup> *Third FNPRM* at ¶ 26, citing WCAI Reply Comments at 4.

<sup>8</sup> For example, the Commission has recognized that current BRS licensees faced greater difficulties in meeting the substantial service requirement given the ongoing transition of the 2.5 GHz band plan, and thus it is reasonable to have provided them with approximately five years from adoption of the current substantial service rule until that May 1, 2001 deadline rather than the four year period proposed for new BRS licensees. See *Third FNPRM* at ¶ 26 ("Given that new BRS licensees will not face issues related to simultaneous transition and construction, we tentatively conclude that requiring new BRS licensees to build out within four years of license grant will ensure that the spectrum is put in use, promote the provision of innovative services, and promote rapid service to the public.").

long period of time.”<sup>9</sup> While a four-year period to demonstrate substantial service may appear aggressive, given that the transition to the new band plan is almost complete, that 2.5 GHz technology is proven, and that equipment is available from multiple vendors at prices that support commercial deployment, the Commission’s proposal strikes an appropriate balance that is fair to both auction winners and members of the public desperate for access to wireless broadband services.

**II. THE COMMISSION SHOULD AMEND SECTION 27.14(O) TO CONFORM TO EARLIER DECISIONS IN THIS DOCKET REGARDING SUBSTANTIAL SERVICE DETERMINATIONS.**

WCAI also urges the Commission to adopt the specific revisions to the introductory text of Section 27.14(o) that are proposed in Appendix B to the *Third FNPRM*.<sup>10</sup> The proposed editorial changes will codify more clearly the Commission’s previous decisions in this docket to attribute to a BRS or EBS licensee its lessee’s satisfaction of the BRS/EBS safe harbors<sup>11</sup> and to allow licenses to be combined for purposes of demonstrating substantial service under certain circumstances.<sup>12</sup> As such, they will reduce the risk of licensee confusion regarding the applicability of Sections 27.14(o)(3), (4) and (5) of the Rules, and thus minimize the potential for dispute once substantial service demonstrations start being filed approximately eighteen months from now.

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<sup>9</sup> *Id.* at ¶ 27.

<sup>10</sup> *See id.* at ¶ 28.

<sup>11</sup> *See* 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, 5726 (2006).

<sup>12</sup> *See* 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, *Third Order on Reconsideration and Sixth Memorandum Opinion and Order and Fourth Memorandum Opinion and Order and Second Further Notice of Proposed Rulemaking and Declaratory Ruling*, 23 FCC Rcd 5992, 6047-48 (2008).

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WHEREFORE, for the foregoing reasons, the Commission should adopt the proposals advanced in the *Third FNPRM*.

THE WIRELESS COMMUNICATIONS  
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