

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matters of)	
)	
International Comparison And Consumer Survey)	
Requirements In The Broadband Data Improvement)	GN Docket No. 09-47
Act)	
)	
A National Broadband Plan for Our Future)	GN Docket No. 09-51
)	
Inquiry Concerning the Deployment of Advanced)	
Telecommunications Capability to All Americans in)	
a Reasonable and Timely Fashion, and Possible)	GN Docket No. 09-137
Steps to Accelerate Such Deployment Pursuant to)	
Section 706 of the Telecommunications Act of 1996,)	
as Amended by the Broadband Data Improvement)	
Act)	

COMMENTS – NBP PUBLIC NOTICE #6

The WCS Coalition,¹ by its attorneys, hereby submits its comments in response to the Commission’s September 23, 2009 *Public Notice* soliciting input on a variety of issues regarding America’s rapidly growing need for spectrum capable of being deployed to provide broadband services.²

The record developed in the Commission’s *National Broadband Plan* proceeding leaves no doubt that Americans have embraced the potential of mobile broadband to provide Internet access when and where they want it. As the staff presentation at the Commission’s September open meeting reported, consumers are subscribing to mobile broadband services in unprecedented number,³ data traffic is exploding,⁴ and the

¹ The WCS Coalition is comprised of the licensees of virtually all of the 2.3 GHz band Wireless Communications Service (“WCS”) spectrum licensed in the United States.

² See *Comment Sought On Spectrum For Broadband; NBP Public Notice # 6*, Public Notice, DA 09-2100 (rel. Sept. 23, 2009).

³ Federal Communications Commission, Commission Open Meeting Presentation on the Status of the Commission's Processes for Development of a National Broadband Plan, at 68 (Sept. 29, 2009)[“September Open Meeting Presentation”](reporting on prediction by Forrester Research that number of data subscribers

resulting strain on network capacity ultimately will require the Commission to free perhaps as much as 1 GHz in spectrum for mobile broadband use.⁵ Chairman Genachowski was spot on when he noted earlier this month that due to the increasing popularity of mobile broadband services, America is facing a “looming spectrum crisis.”⁶ With the spectrum pipeline almost dry,⁷ there is no quibbling with the Chairman’s observation that “we will need a lot more spectrum.”⁸

Whether one believes the goal should be 800 MHz, or 1 GHz, or some figure in between, identifying all of the required additional spectrum will prove challenging, to say the least. However, as the Chinese proverb says, “a journey of a thousand miles starts with one step.” And the journey to free additional spectrum for mobile broadband can and should start with the 30 MHz of WCS spectrum at 2305-2320/2345-2360 MHz.

The 2.3 GHz band is already enjoying tremendous popularity as a home for broadband service offerings around the globe.⁹ The United States is being left behind.

will increase from 67 million in 2008 to 139 million in 2013); *id.* at 67 (“Smartphone sales to overtake standard phones by 2011”).

⁴ *See id.* at 66 (reporting that data usage will increase from 17 petabytes per month this year to 397 petabytes per month in 2013); *id.* at 68 (reporting on Yankee Group projection that relative to 2009 data usage will grow almost thirty-fold by 2015).

⁵ *See id.* at 63 (“Some models suggest a need for more than 1 GHz of total allocated spectrum”). *See also* Letter from Christopher Guttman-McCabe, Vice President, Regulatory Affairs, CTIA-The Wireless Association, to Chairman Julius Genachowski, *et al.*, Federal Communications Commission, GN Docket No. 09-51 (filed Sept. 29, 2009)(suggesting need for allocation of additional 800 MHz for mobile broadband services).

⁶ Julius Genachowski, Chairman, Federal Communications Commission, America’s Mobile Broadband Future, Remarks at International CTIA Wireless I.T. & Entertainment, at 4 (Oct. 7, 2009)[“Genachowski Spectrum Speech”]. Chairman Genachowski is hardly alone in this belief. Indeed, just last week Commissioner Baker affirmed that America is facing a “spectrum crisis.” John Curran, *Baker Seconds Warning On Spectrum Crisis*, TR DAILY, Oct. 15, 2009.

⁷ *See* September Open Meeting Presentation at 74.

⁸ Genachowski Spectrum Speech at 5.

⁹ *See* Comments of the WCS Coalition, WT Docket No. 07-293 *et al.*, at 6 n.11 (filed Feb. 14, 2008)[“WCS Comments”].

Although the 2.3 GHz band is already allocated domestically for mobile service,¹⁰ as a practical matter, the Commission's regulatory regime for the 2305-2360 MHz band precludes this spectrum from being used to meet consumer demand for mobile broadband services to devices such as PCMCIA cards, dongles, netbooks, tablets and handheld smartphones. However, relief is in sight.

This is neither the time nor the place to rehash the record in IB Docket No. 95-91 and WT Docket No. 07-293. Suffice it to say that until the Commission provides WCS licensees with relief from the onerous limit on out-of-band emissions ("OOBE") into the 2320-2345 MHz satellite Digital Audio Radio Service ("DARS") band and adopts reasonable limits on DARS terrestrial repeater power levels, use of this band to provide the sorts of mobile consumers demand simply will not be possible.¹¹ As is discussed in the WCS Coalition's various filings in IB Docket No. 95-91 and WT Docket No. 07-293, adoption of the rule revisions proposed by the WCS Coalition will permit this 30 MHz to be used for a viable mobile broadband service, without imposing any unreasonable burdens on DARS. While this 30 MHz will not solve America's looming spectrum crisis, it will be a very good first step.

It has now been eleven months since a draft report and order resolving these two proceedings began circulating among the Commissioners for adoption.¹² Although the item was scheduled for adoption at the Commission's December 2008 open meeting,¹³ it

¹⁰ See 47 C.F.R. § 2.106 (allocating the band for Mobile except aeronautical mobile). See also Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service ("WCS"), Report and Order, 12 FCC Rcd 10785, 10787 (1997).

¹¹ See Reply Comments of the WCS Coalition, WT Docket No. 07-293 *et al.*, at 7-9 (filed Mar. 17, 2008); WCS Comments at 4-7.

¹² Federal Communications Commission, FCC Items on Circulation, http://www.fcc.gov/fcc-bin/circ_items.cgi (last visited Oct. 20, 2009).

¹³ *FCC Announces Tentative Agenda for December 18 Open Meeting*, News Release, at 2 (rel. Dec. 8, 2008).

was subsequently placed on the proverbial back burner amid concerns that the then-impending DTV transition should be the Commission's sole focus. With the DTV transition largely completed, and the Commission's focus turned to America's broadband needs, it is now time to return these proceedings to the front burner for immediate action.¹⁴

Chairman Genachowski has made clear that to "further America's leadership in mobile," there must be "unleashing spectrum for broadband" and "removing obstacles to 4G deployment."¹⁵ What better way to start than to adopt in IB Docket No. 95-91 and WT Docket No. 07-293 the rule revisions necessary for the United States to join the international community's use of the 2.3 GHz band for mobile broadband?

Respectfully submitted,

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¹⁴ Indeed, during the months in which these proceedings were in limbo, the record in support of the OOB relief the WCS Coalition seeks has only become more compelling. In late July, the WCS Coalition conducted an open and transparent field demonstration of WCS mobile broadband technology in Ashburn, VA. The results of that demonstration, which was viewed by several members of the Commission's staff and which was open to the public, established beyond peradventure that adoption of the WCS Coalition's compromise OOB proposal will not result in undue interference to DARS reception. See Letter from Mary N. O'Connor, Counsel to the WCS Coalition, to Marlene H. Dortch, Secretary, Federal Communications Commission (filed Aug. 4, 2009). Thus, whatever doubts may have existed before as to the wisdom of the WCS Coalition's proposed solution should now be assuaged.

¹⁵ Genachowski Spectrum Speech at 2.