



PUBLIC NOTICE

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**WIRELESS TELECOMMUNICATIONS BUREAU OPENS FILING WINDOW
FOR PROPOSALS TO DEVELOP AND MANAGE
THE CLEARINGHOUSE THAT WILL ADMINISTER THE RELOCATION
COST SHARING PLAN FOR LICENSEES IN THE 2.1 GHZ BANDS
(WT Docket No. 02-353, ET Docket No. 00-258)**

By this Public Notice, the Wireless Telecommunications Bureau (“WTB” or “Bureau”) solicits proposals from entities who wish to act as a neutral, not-for-profit clearinghouse¹ responsible for facilitating cost sharing among entrants benefiting from the relocation of incumbent licensees in the 2.1 GHz bands. The Bureau will accept proposals until July 17, 2006, and will make the proposals available for public inspection. Comments on the specific proposals or on other issues related to the Bureau’s selection of a clearinghouse must be filed by July 31, 2006, and replies to comments on specific proposals must be filed by August 14, 2006.

Background information. In the *AWS Relocation and Cost Sharing Report and Order*,² adopted April 12, 2006, the Commission established procedures for the relocation of Broadband Radio Service (BRS) operations from the 2150-2160/62 MHz band.³ The *AWS Relocation and Cost Sharing Report and Order* also established procedures for the relocation of Fixed Microwave Service (FS) operations from the 2160-2175 MHz band and modified existing relocation procedures for the 2110-2150 MHz and 2175-2180 MHz bands. In addition, the

¹ WTB will select one or more entities to operate as a neutral, not-for-profit clearinghouse(s). This clearinghouse(s) will administer the cost-sharing plan. See 47 C.F.R. §§ 27.1162, 27.1178. For convenience only, herein we refer to the clearinghouse in the singular.

² Amendment of Part 2 of the Commission’s Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Service to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems, ET Docket No. 00-258, Service Rules for Advances Wireless Services in the 1.7 GHz and 2.1 GHz Bands, WT Docket No. 02-353, *Ninth Report and Order and Order*, FCC 06-45 (rel. April 21, 2006) (*AWS Relocation and Cost Sharing Report and Order*).

³ The Multipoint Distribution Service (MDS) was renamed the Broadband Radio Service (BRS) in the *BRS R&O*. 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 MHz and 2500-2690 MHz Bands, WT Docket No. 03-66, *Report and Order and Further Notice of Proposed Rulemaking*, 19 FCC Rcd 14165 (2004) (“*BRS R&O and FNPRM*”); *Third Memorandum Opinion and Order and Second Report and Order*, FCC 06-46 (rel. April 27, 2006) (“*BRS Third MO&O and Second R&O*”). Therefore, all former MDS licensees are now referred to as BRS licensees. BRS uses 2160-2162 MHz only in the top 50 markets. In WT Docket 03-66, as part of an overall restructuring of the BRS spectrum, the Commission established a channel plan in the 2496-2690 MHz band that is designed to accommodate BRS licensees that currently operate in the 2150-2160/62 MHz band.

Commission adopted cost sharing rules to identify the reimbursement obligations for Advanced Wireless Service (AWS) and Mobile Satellite Service (MSS) entrants benefiting from the relocation of incumbent FS operations in the 2110-2150 MHz and 2160-2200 MHz bands and AWS entrants benefiting from the relocation of BRS incumbents in the 2150-2160/62 MHz band.

Specifically, in the *AWS Relocation and Cost Sharing Report and Order*, the Commission delegated authority to the Bureau to select one or more entities for the creation and management of a neutral, not-for-profit clearinghouse that would facilitate cost sharing among AWS and MSS entrants benefiting from the relocation of FS incumbents in the 2110-2150 MHz and 2160-2200 MHz bands.⁴ Mobile Satellite Service (MSS) operators are required to participate in the clearinghouse for Ancillary Terrestrial Component (ATC) base stations, *see e.g.*, 47 C.F.R. § 101.82(d), and may elect to submit claims for reimbursement to the AWS clearinghouse for FS links relocated due to interference from the MSS space-to-Earth operations.⁵ The Commission also therein delegated authority to the Bureau to select one or more entities for the creation and management of a neutral, not-for-profit clearinghouse to facilitate cost sharing among AWS entrants benefiting from the relocation of BRS incumbents in the 2150-2160/62 MHz band.⁶ The Commission stated that selection would be based on criteria established by the Bureau, and that the Bureau would publicly announce the criteria and solicit proposals from qualified parties.⁷ The Commission also instructed the Bureau to solicit public comment on proposals that are submitted and, after selecting the clearinghouse administrator(s), to announce the effective date of the clearinghouse filing requirements.⁸

Clearinghouse proposals. We request that an existing or newly-formed entity interested in serving as a cost sharing clearinghouse submit a business plan detailing how the entity would perform the functions of a clearinghouse. Proposals received after July 17, 2006, will not be considered. At a minimum, each proposal must include:

- a reference to this public notice and WT Docket No. 02-353 and ET Docket No. 00-258;
- the name and a description of the entity proposing to be a clearinghouse, and a description of its qualifications;

⁴ *See AWS Relocation and Cost Sharing Report and Order* at ¶ 83.

⁵ *See id.* at ¶¶ 93-94.

⁶ *See id.* at ¶¶ 106-107. The Commission made no determination at the time as to whether a clearinghouse must provide administration for both FS and BRS-related cost sharing. *See id.* at n.374. However, the Commission recognized the efficiencies in a clearinghouse administering the cost sharing processes for the relocation of both FS and BRS incumbents in the subject bands. *See id.* at ¶ 106.

⁷ *See id.* at ¶¶ 83, 107.

⁸ *See id.* at ¶¶ 83, 107. Claims for reimbursement are limited to relocation expenses incurred on or after the date when the first AWS license is issued in the relevant AWS band (start date). If a clearinghouse is not selected by that date, claims for reimbursement and notices of operation for activities that occurred after the start date but prior to the clearinghouse selection must be submitted to the clearinghouse within thirty calendar days of the selection date. *See* 47 C.F.R. § 27.1166.

- information regarding financial data, including business plans, which should address how the entity intends to raise start-up funds and how much the entity plans to charge for individual transactions;
- whether the entity is interested in serving as a clearinghouse for FS relocations, BRS relocations, or both;
- a detailed description of accounting methods (*e.g.*, how the entity intends to separate out premium payments, which are nonreimbursable);
- a description of how the entity intends to address concerns about confidentiality, and a description of security measures the entity will take to safeguard submitted information, including off-site data back-up facilities and measures to ensure continuity of access to the information in the event the entity's operations are interrupted;
- a certification that the entity will be able and willing to work with other clearinghouse managers should WTB decide to designate more than one;
- a certification that the entity is a not-for-profit organization and will retain its not-for-profit status during the term of its operations;
- a description of how the entity intends to remain impartial and how it will prevent any conflicts of interest;
- an assessment of how long it would take the entity to become operational and how many days it would take the clearinghouse to notify licensees of a reimbursement obligation;
- a description of how the entity intends to resolve disputes between parties (*e.g.*, disputes over whether a particular expense is reimbursable); and
- the name, address, telephone number, and signature of a contact person familiar with the proposal.

We emphasize that the above requirements are only what, at a minimum, must be included in each proposal. The Bureau will evaluate proposals by balancing a number of factors, which include the criteria listed above (in particular, the entity's qualifications, plans for operation of the clearinghouse, and amount of time to become operational) as well as an overall assessment of the particulars of each entity's proposal.

Parties submitting comments to the Commission should specifically address the particulars of each proposal. In addition, we seek comment on whether more than one clearinghouse would be feasible and, if we decide to designate multiple clearinghouses, what mechanisms should be implemented to facilitate their simultaneous operation. We further seek comment on whether, as a general matter, proposals that offer to administer cost sharing for both FS and BRS relocations are preferable to proposals that seek to administer cost sharing for only one of these relocation processes.

Once selected, a clearinghouse must operate in accordance with the Commission's Rules. Accordingly, any entity proposing to serve as a clearinghouse is expected to be familiar with the applicable Commission rules, policies, and procedures.

Comments on proposals. Clearinghouse proposals will be available to the public.⁹ Comments on the specific proposals or on other issues related to the Bureau's selection of a clearinghouse must be filed by July 31, 2006, and replies to comments on specific proposals must be filed by August 14, 2006.

Filing instructions. Under the Commission's current procedures for the submission of filings and other documents,¹⁰ submissions in this matter may be filed electronically (*i.e.*, through ECFS) or by paper copy. EXCEPTION: Any material submitted with a request for non-disclosure pursuant to 47 C.F.R. § 0.459 must be filed by paper. Confidential filings are not permitted to be filed electronically.

If filed by ECFS,¹¹ comments shall be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket number. Parties may also submit an electronic comment by Internet e-mail. For ECFS filers, if multiple docket or rule making numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rule making number referenced in the caption. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

If filed by paper, the original and four copies of each filing must be filed by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S.

⁹ "[I]t is important for any person who submits materials which he wishes withheld from public inspection under 5 U.S.C. 552(b)(4) to submit therewith a request for non-disclosure pursuant to 47 C.F.R. § 0.459. If it is shown in the request that the materials contain trade secrets or commercial, financial or technical data which would customarily be guarded from competitors, the materials will not be made routinely available for inspection; and a persuasive showing as to the reasons for inspection will be required in requests for inspection submitted under 47 C.F.R. § 0.461. In the absence of a request for non-disclosure, the Commission may, in the unusual instance, determine on its own motion that the materials should not be routinely available for public inspection. Ordinarily, however, in the absence of such a request, materials which are submitted will be made available for inspection upon request pursuant to 47 C.F.R. § 0.461, even though some question may be present as to whether they contain trade secrets or like matter." 47 C.F.R. § 0.457(d)(2).

¹⁰ See Implementation of Interim Electronic Filing Procedures for Certain Commission Filings, *Order*, 16 FCC Rcd 21483 (2001); see also FCC Announces a New Filing Location for Paper Documents and a New Fax Number for General Correspondence, *Public Notice*, 16 FCC Rcd 22165 (2001); Reminder: Filing Locations for Paper Documents and Instructions for Mailing Electronic Media, *Public Notice*, 18 FCC Rcd 16705 (2003).

¹¹ See Electronic Filing of Documents in Rulemaking Proceedings, GC Docket No. 97-113, *Report and Order*, 13 FCC Rcd 11322 (1998).

Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, S.W., Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

One copy of each pleading must be delivered electronically, by e-mail or facsimile, or if delivered as paper copy, by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (according to the procedures set forth above for paper filings), to the Commission's duplicating contractor, Best Copy and Printing, Inc., at fcc@bcpiweb.com, or (202) 488-5563 (facsimile).

Copies of the documents filed in this matter may be obtained from Best Copy and Printing, Inc. in person at 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, via telephone at (202) 488-5300, via facsimile at (202) 488-5563, or via e-mail at fcc@bcpiweb.com. These documents are also available for public inspection and copying during normal reference room hours at the following Commission office: FCC Reference Information Center, 445 12th Street, S.W., Room CY-A257, Washington, D.C. 20554. The documents are also available electronically through the Commission's ECFS, which may be accessed on the Commission's Internet website at <http://www.fcc.gov>.

Permit-but-disclose proceeding. Because of the policy implications and potential impact of this proceeding on persons not parties hereto, we believe it would be in the public interest to treat all proposals filed in response to this Public Notice as a single, permit-but-disclose proceeding under the *ex parte* rules, *see* 47 C.F.R. §§ 1.1200(a), 1.1206. Therefore, subsequent to the release of this Public Notice, *ex parte* presentations that are made with respect to proposals, comments, or other issues involved herein will be allowed but must be disclosed in accordance with the requirements of Section 1.1206(b) of the Commission's Rules, 47 C.F.R. § 1.1206(b). Permit-but-disclose *ex parte* procedures permit interested parties to make *ex parte* presentations to the Commissioners and Commission employees and require that these presentations be disclosed in the record of the relevant proceeding. Persons making a written *ex parte* presentation to the Commissioners or Commission employees must file the written presentation with the Commission's Secretary no later than the next business day after the presentation. 47 C.F.R. § 1.1206(b)(1). Persons making oral *ex parte* presentations must file a summary of the presentation and deliver copies to the Commissioners or Commission employees involved with the presentation no later than the next business day after the presentation. 47 C.F.R. § 1.1206(b)(2). All *ex parte* filings must be clearly labeled as such and must reference WT Docket No. 02-353 and the DA number of this public notice, DA 06-1279.

Decision. WTB will base its decision on the information provided. Once WTB designates one or more clearinghouse managers, such designation(s) will take effect upon the execution by such clearinghouse manager(s) and the WTB of a Memorandum of Understanding (MOU). Once a decision has been made and MOUs executed, the Bureau will announce by public notice the names and addresses of the selected Database Managers.

People with Disabilities. To request this Public Notice in accessible formats (computer diskette, large print, audio recording, and Braille) send an email to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0539 (voice), (202) 418-0432 (TTY).

For further information, contact Mary Woytek, Broadband Division, Wireless Telecommunications Bureau, at (202) 418-2487.

By the Acting Chief, Wireless Telecommunications Bureau.

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