

Before the
Federal Communications Commission
Washington, D.C. 20554

In the matter of )
CENTRAL TEXAS COMMUNICATIONS, INC. )
Petition for Waiver of the FCC's Rules Regarding )
Transition of Broadband Radio Service and )
Educational Broadband Service to the Revised )
Band Plan )

MEMORANDUM OPINION AND ORDER

Adopted: April 17, 2009

Released: April 17, 2009

By the Associate Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. The Wireless Telecommunications Bureau (WTB or Bureau) has before it a request by Central Texas Communications, Inc. (CTC), seeking a waiver of Sections 27.1230-27.1239 of the Commission's Rules for itself and its Educational Broadband Service (EBS) lessors. CTC has demonstrated that a waiver is necessary for it to continue serving its customers as it has for over 15 years. We therefore grant CTC's Waiver Request to the extent indicated herein. We also have before us a transition initiation plan filed on February 12, 2007 by Sprint Nextel Corporation (Sprint Nextel) for the

1 Petition for Waiver (filed Apr. 11, 2007) (Waiver Request). Sections 27.1230-27.1239 of the Commission's rules concern the transition of the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) to the band plan adopted by the Commission in the BRS/EBS Report and Order. 47 C.F.R. §§ 27.1230-27.1239. 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, Report and Order and Further Notice of Proposed Rulemaking, WT Docket No. 03-66, 19 FCC Rcd 14165 (2004) (BRS/EBS R&O and FNPRM as appropriate).

2 CTC is the licensee for Stations WMI995 (Channel 1); WNTK966 (Channel H1); WMI987 (Channel 1); WMH728 (Channels E1-E4); WMH724 (Channels F1-F4); WNTK967 (Channels H2-H3); and WMI944 (Channel 1); and also BTAs 057 and 191. Waiver Request, Exhibit A.

3 CTC's lessors are as follows: Station WLX718 (Goldthwaite Independent School District) (Channels D1-D4); Station WLX688 (Star Independent School District) (Channels B1-B4); Station WLX686 (Priddy Independent School District) (Channels A1-A4); Station WLX685 (Mullin Independent School District) (Channels C1-C4); Station WNC825 (Zephyr Independent School District) (Channels G1-G4); Station WLX564 (Lohn Independent School District) (Channels A1-A4); Station WLX567 (Brady Independent School District) (Channels G1-G2); and Station WLX756 (Rochelle Independent School District) (Channels C1-C4). Waiver Request, Exhibit A.

4 On May 24, 2007, the Broadband Division/WTB released a Public Notice seeking comment on the waiver request. Comments were due on June 25, 2007 and replies were due on July 10, 2007. Wireless Telecommunications Bureau Seeks Comment on Request by Central Texas Communications, Inc. for Waiver of the Requirement to Transition to the New BRS/EBS Band Plan, Public Notice, 22 FCC Rcd 9414 (WTB BD 2007).

5 Letter from Robert H. McNamara, Director, Spectrum Management, Sprint Nextel Corporation to Office of the Secretary, Federal Communications Commission, WT Docket No. 06-136 (filed Feb. 12, 2007) (Sprint Nextel Brownwood, Texas Transition Initiation Plan).

Brownwood, Texas Basic Trading Area (BTA) where certain of CTC's stations are located. We dismiss Sprint Nextel's transition initiation plan because of our grant of CTC's Waiver Request.

## II. BACKGROUND

2. On July 29, 2004, the Commission released a *Report and Order and Further Notice of Proposed Rulemaking (BRS/EBS R&O)* that transformed the rules and policies governing the licensing of services in the 2500-2690 MHz band.<sup>6</sup> Prior to the *BRS/EBS R&O*, the technical rules and band plan for the 2500-2690 MHz band were designed primarily to promote wireless cable and educational television services, which resulted in licensees receiving interleaved channel groups instead of contiguous channel blocks.<sup>7</sup> In most areas of the country, however, the deployment of wireless cable was not successful.

3. Consequently, in the *BRS/EBS R&O*, the Commission developed a new band plan and technical rules that permit a range of new and innovative wireless services in the 2500-2690 MHz band and give licensees contiguous channel blocks.<sup>8</sup> The new band plan consists of two low-power segments, the Lower Band Segment (LBS) and the Upper Band Segment (UBS), and a high-power segment, the Middle Band Segment (MBS).<sup>9</sup> The channel configuration and the technical rules for the LBS and UBS are designed to permit a range of wireless services.<sup>10</sup> The MBS, in contrast, consists of seven high-power channels and is designed for the transmission of video programming, for those licensees that still wish to provide such programming.<sup>11</sup> The *BRS/EBS R&O* further established a plan to transition EBS and BRS licensees from their interleaved channel locations to their new channel locations in the LBS, UBS, or MBS.<sup>12</sup> Not all licensees, however, are required to transition to the new band plan and technical rules. The *BRS/EBS R&O* permitted a limited number of Multichannel Video Programming Distributors (MVPDs) to seek a waiver from the Commission to "opt-out" of the transition, thus permitting them to continue their high-power, high-site operations throughout the entire 2500-2690 MHz band.<sup>13</sup> On April 27, 2006, the Commission released the *Third Memorandum Opinion and Order and Second Report and Order (3rd MO&O)*, in which it affirmed its decision to consider these waivers on a case-by-case basis.<sup>14</sup>

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<sup>6</sup> See *BRS/EBS R&O* and *FNPRM*.

<sup>7</sup> In the EBS and BRS services, channels are usually licensed in groups of four. When EBS was created, EBS reception equipment could not receive adjacent channels without interference. Thus, the Commission interleaved the A block channels with the B block channels, the C block channels with the D block channels, the E block channels with the F block channels, and the G block channels with the H block channels. 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, *Notice of Proposed Rulemaking and Memorandum Opinion and Order*, WT Docket No. 03-66, 18 FCC Rcd 6722, 6744 ¶ 47 (2003) (*NPRM*).

<sup>8</sup> See *BRS/EBS R&O*, 19 FCC Rcd at 14168 ¶ 4.

<sup>9</sup> *Id.* at 14169 ¶ 6.

<sup>10</sup> *Id.* at 14168 ¶ 4.

<sup>11</sup> *Id.* at 14185-14186 ¶ 4.

<sup>12</sup> *Id.* at 14197-14198 ¶ 72.

<sup>13</sup> *Id.* at 14199-14200 ¶ 77.

<sup>14</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, *Third Memorandum Opinion and Order and Second Report and Order*, WT Docket No. 03-66, 21 FCC Rcd 5606, 5645 ¶ 72 (2006) (*BRS/EBS 3rd MO&O*). In the *3rd MO&O*, the Commission also granted WATCH TV's request to opt-out of the transition of the 2.5 GHz band in Lima, Ohio. *Id.* at ¶ 84.

4. CTC states that it has, for years, devised successful business plans for the deployment of video and broadband services using BRS and EBS licenses, and currently provides video and broadband services to more than 2,700 subscribers, including local residents, schools, businesses, and hospitals in rural Texas.<sup>15</sup> CTC notes in particular that it has spent more than fifteen years and invested almost two million dollars building and developing its broadband and “wireless cable” system, and that CTC’s MVPD service is competitive with that of the larger cable and DBS operators, providing consumers a similar range of programming at much lower cost.<sup>16</sup>

5. CTC asks on behalf of itself and its EBS lessors to “opt-out” of the transition of the 2500-2690 MHz band in Goldthwaite, Lohn, and San Saba, Texas and seeks a waiver of Section 27.1230-27.1239 of the Commission’s rules for itself and all of its lessors.<sup>17</sup> In addition, CTC requests that the waiver state that:

- CTC and its channel lessors will have permanent authority to operate pursuant to Section 27.1209 on the “pre-transition” BRS/EBS band plan set forth in Section 27.5(i)(1);
- CTC and its channel lessors must participate in good faith in any transition planning process relating to any geographic area that overlaps their GSAs. In conjunction with any transition, CTC and its channel lessors will subsequently make such modifications to their facilities at the proponent’s expense as the proponent may reasonably request in an effort to reduce interference to licensees in other markets that are transitioning, provided that such modifications can be accomplished without cumulatively resulting in more than a *de minimis* reduction in CTC’s ability to serve its then-existing subscribers;
- Every main, booster, and base station currently used in conjunction with CTC’s system shall be permitted to continue operating under the maximum EIRP limits set forth for “pre-transition” operations in Section 27.50(h)(1)(i) and (ii);
- Any channel used for the transmission of video programming on CTC’s system shall be permitted to continue operating under the pre-transition emission limits for digital video programming channels set forth in Section 27.53(l)(3).<sup>18</sup> In addition, per Section 27.53(l)(5), CTC and its channel lessors shall be permitted to operate fixed, temporary fixed and mobile data stations deployed as of January 10, 2005, provided that those facilities are in compliance with the emission limits set forth in former Section 21.908 and 74.936;
- Consistent with Section 27.55(a)(4)(i), all of the BRS and EBS channels in CTC’s system will be permitted to operate at any point along their respective GSA boundaries at the greater signal strength of 47 dBu or the strength authorized in their underlying licenses as of January 10, 2005;
- Sections 27.1220 (regarding the 5.5 MHz wide channels in the LBS and UBS) and 27.1222 (regarding the establishment of guardbands around the MBS) shall not be applicable to CTC and its channel lessors; and

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<sup>15</sup> Waiver Request at 6.

<sup>16</sup> *Id.* at 6-7.

<sup>17</sup> *Id.* at 1.

<sup>18</sup> In fact, because CTC is operating an analog video system, the applicable rule is 47 C.F.R. § 27.53(l)(1), which sets forth the pre-transition out-of-band emission limits for analog video systems.

- CTC and its channel lessors shall not be subject to the height benchmarking obligations set forth in Section 27.1221.<sup>19</sup>

6. CTC argues that it meets the FCC's waiver standard, as CTC both meets the definition of a multichannel video programming distributor (MVPD) and serves more than eleven percent of the households within its GSA, thereby meeting the standard of five or more percent of the households in the GSA.<sup>20</sup> CTC states that it has a viable business plan to deliver and improve service to its customers.<sup>21</sup> CTC estimates that there are no licensees within the immediate area of CTC's GSA that would be negatively affected by allowing CTC to opt out of the transition.<sup>22</sup> CTC further states that, consistent with the conditions imposed on WATCH TV in the *BRS/EBS 3d MO&O* and on Digital TV One,<sup>23</sup> CTC is prepared to participate in any transition planning process in good faith.<sup>24</sup>

7. Transition initiation plans have been filed for Brownwood, Texas, the BTA within which CTC's system is located,<sup>25</sup> and four BTAs near CTC's BTA: Waco, Texas, San Antonio, Texas; Dallas-Fort Worth, Texas; and Austin, Texas.<sup>26</sup> With respect to the Brownwood, Texas, BTA, Sprint Nextel stated that it would be necessary to transition six of CTC's licenses and five of CTC's lessors' licenses.<sup>27</sup> Each of the stations that Sprint Nextel proposed to transition in the Brownwood, Texas BTA was licensed to or leased by CTC, and most of the stations in question were included in CTC's Waiver Request.<sup>28</sup> With respect to the Waco, Texas BTA, Sprint contends that there would be potential interference from CTC's

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<sup>19</sup> Waiver Request at 13.

<sup>20</sup> *Id.* at 5-6.

<sup>21</sup> *Id.* at 9.

<sup>22</sup> *Id.* at 9.

<sup>23</sup> See WHTV Broadcasting Company d/b/a Digital TV One, 22 FCC Rcd 1314 (WTB 2007), *recon. pending*.

<sup>24</sup> Waiver Request at 10.

<sup>25</sup> See *supra* n.5.

<sup>26</sup> See Letter from Robert H. McNamara, Director, Spectrum Management, Government Affairs, Sprint Nextel Corporation to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 06-136 (dated Feb. 12, 2007) (Sprint Nextel Waco, Texas Initiation Plan); Letter from Terri B. Natoli, V.P. Regulatory Affairs & Public Policy, Clearwire Corporation to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 06-136 (dated Dec. 8, 2006) (Clearwire San Antonio, Texas Initiation Plan); Letter from Robert H. McNamara, Director, Spectrum Management, Government Affairs, Sprint Nextel Corporation to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 06-136 (dated Jan. 23, 2007) (Sprint Nextel Dallas-Fort Worth, Texas Initiation Plan); Letter from Robert H. McNamara, Director, Spectrum Management, Government Affairs, Sprint Nextel Corporation to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 06-136 (dated Feb. 1, 2007) (Sprint Nextel Austin, Texas Initiation Plan).

<sup>27</sup> See *id.* As required by 47 C.F.R. § 27.1231(f)(1)(iv), each of the transition plans identified instances in which it would be necessary to transition licensees in adjacent or adjoining BTAs in order to avoid interference to licensees in the BTA being transitioned. Only one of the four plans in question, the Sprint Nextel Brownwood, Texas Initiation Plan, mentioned any of the stations that constitute CTC's system. Those stations are B057, WMH724, WMH728, WMI944, WMI995, and WNTK967, all licensed to CTC; and WLX718, WLX685, WLX686, WLX688, and WNC825, licensed to various lessors of CTC. See Sprint Nextel Brownwood, Texas Initiation Plan at Exhibit A. We note, however, that some of CTC's stations are located in the San Angelo, Texas BTA (B400). A transition initiation plan for B400 has not been filed. The following CTC stations are located in B400: WLX564, WLX567, WLX756, WMI987, and WNTK966. *Id.*

<sup>28</sup> See Sprint Nextel Brownwood, Texas Initiation Plan at Exhibit A.

system to operations in the Waco BTA.<sup>29</sup> In the remaining BTAs, the proponent certified that it would not be necessary to transition CTC's system in order to transition the BTAs.

8. The National Telecommunications Cooperative Association (NTCA) and Coleman County Broadcasting (CCB)<sup>30</sup> filed comments supporting CTC's Waiver Request,<sup>31</sup> as have several subscribers to CTC's service.<sup>32</sup> Sprint Nextel<sup>33</sup> and Xanadoo, LLC (Xanadoo) and Clearwire Corporation (Clearwire)<sup>34</sup> opposed the Waiver Request. Also, Clearwire, Sprint Nextel, Xanadoo, and NextWave Wireless, Inc. (NextWave) filed comments<sup>35</sup> addressed to the eleven opt-out waiver requests on which the Bureau had sought comment.<sup>36</sup> CTC and other parties requesting opt-out waivers ("Waiver Proponents") filed a joint letter arguing that the Joint Commenters are attempting to contravene the Commission's repeated and consistent determinations that waivers of the BRS/EBS band plan transition rules should be

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<sup>29</sup> Sprint Nextel Waco, Texas Initiation Plan.

<sup>30</sup> Comments of Coleman County Broadcasting on Petition for Waiver (filed Jun. 25, 2007) (CCB Comments).

<sup>31</sup> Comments of the National Telecommunications Cooperative Association (filed Jun. 25, 2007) (NTCA Comments).

<sup>32</sup> See 28 letters from CTC subscribers to Marlene H. Dortch, Secretary, Federal Communications Commission (filed Jun. 22, 2007) (Subscriber Letters).

<sup>33</sup> Opposition of Sprint Nextel Corporation (filed Jun. 25, 2007) (Sprint Nextel Opposition).

<sup>34</sup> Comments in Opposition to Petition for Waiver (filed Jun. 25, 2007) (Xanadoo/Clearwire Opposition).

<sup>35</sup> Letter from Terri B. Natoli, Vice President, Regulatory Affairs & Public Policy, Clearwire Corporation, Trey Hanbury, Director Spectrum Proceedings, Sprint Nextel Corporation, Cheryl Crate, Vice President, Government and Public Relations, Xanadoo, LLC, and Jennifer M. McCarthy, Vice President, Regulatory Affairs, NextWave Wireless, Inc. to Marlene H. Dortch, Federal Communications Commission (dated Jun. 25, 2007) (Joint Comments).

<sup>36</sup> On June 25, 2007, the Commission had pending before it opt-out waiver requests from CTC; C&W Enterprises, Inc.; Northwest Communications Cooperative; Choice Communications LLC; CNI Wireless, Inc.; Dakota Central Telecommunications Cooperative *et al.*; Evertek, Inc.; Northern Wireless Communications Inc.; RC Technologies Corporation; Starcom, Inc.; and United Telephone Mutual Aid Corporation. Wireless Telecommunications Bureau Seeks Comment on Request by Central Texas Communications, Inc. for Waiver of the Requirement to Transition to the New BRS/EBS Band Plan, *Public Notice*, 22 FCC Rcd 9414 (WTB BD 2007); Wireless Telecommunications Bureau Seeks Comment on Request by C&W Enterprises, Inc. for Waiver of the Requirement to Transition to the New BRS/EBS Band Plan, *Public Notice*, 22 FCC Rcd 9410 (WTB BD 2007); Wireless Telecommunications Bureau Seeks Comment on Request by Northwest Communications Cooperative for Waiver of the Requirement to Transition to the New BRS/EBS Band Plan, *Public Notice*, 22 FCC Rcd 9378 (WTB BD 2007); Wireless Telecommunications Bureau Seeks Comment on Request by Choice Communications LLC for Waiver of the Requirement to Transition to the New BRS/EBS Band Plan, *Public Notice*, 22 FCC Rcd 9357 (WTB BD 2007); Wireless Telecommunications Bureau Seeks Comment on Request by CNI Wireless, Inc. for Waiver of the Requirement to Transition to the New BRS/EBS Band Plan, *Public Notice*, 22 FCC Rcd 9368 (WTB BD 2007); Wireless Telecommunications Bureau Seeks Comment on Request by Dakota Central Telecommunications Cooperative *et al.* for Waiver of the Requirement to Transition to the New BRS/EBS Band Plan, *Public Notice*, 22 FCC Rcd 9371 (WTB BD 2007); Wireless Telecommunications Bureau Seeks Comment on Request by Evertek, Inc. for Waiver of the Requirement to Transition to the New BRS/EBS Band Plan, *Public Notice*, 22 FCC Rcd 9361 (WTB BD 2007); Wireless Telecommunications Bureau Seeks Comment on Request by Northern Wireless Communications Inc. for Waiver of the Requirement to Transition to the New BRS/EBS Band Plan, *Public Notice*, 22 FCC Rcd 9394 (WTB BD 2007); Wireless Telecommunications Bureau Seeks Comment on Request by RC Technologies Corporation for Waiver of the Requirement to Transition to the New BRS/EBS Band Plan, *Public Notice*, 22 FCC Rcd 9364 (WTB BD 2007); Wireless Telecommunications Bureau Seeks Comment on Request by Starcom, Inc. for Waiver of the Requirement to Transition to the New BRS/EBS Band Plan, *Public Notice*, 22 FCC Rcd 9401 (WTB BD 2007); Wireless Telecommunications Bureau Seeks Comment on Request by United Telephone Mutual Aid Corporation for Waiver of the Requirement to Transition to the New BRS/EBS Band Plan, *Public Notice*, 22 FCC Rcd 9404 (WTB BD 2007).

considered on a case-by-case basis in light of the facts and circumstances of the particular waiver requests.<sup>37</sup> CTC has replied,<sup>38</sup> and Sprint Nextel has submitted further comments in opposition,<sup>39</sup> to which CTC has responded.<sup>40</sup> Sprint Nextel subsequently supplemented its comments.<sup>41</sup> Clearwire also submitted an engineering study purporting to show that allowing CTC to opt-out would prevent it from upgrading its systems in Killeen and Waco, Texas to WiMAX technology.<sup>42</sup>

9. NTCA argues that the circumstance in which CTC and its rural subscribers find themselves is precisely that which the Commission's waiver process is intended to address.<sup>43</sup> NTCA states that CTC is a successful business providing video service to rural subscribers for whom there are few, if any, alternatives, and that forcing CTC to transition would be inequitable and unduly burdensome, and would result in a loss of valued video service to rural consumers.<sup>44</sup> NTCA contends that the public interest benefit of the requested waiver weighs heavily in favor of granting CTC's request.<sup>45</sup> CTC's subscribers state that CTC provides a wide range of programming over its video system at significantly lower cost than CTC's competing cable and DBS operators, and that CTC carries local over-the-air network broadcasts, including local news and weather information, which CTC's competitors do not offer.<sup>46</sup>

10. CCB filed comments agreeing with CTC's analysis,<sup>47</sup> but notes that CCB finds itself in the same position as CTC, although CCB does not serve enough customers with its wireless cable system at Santa Anna, Texas to enable CCB to file its own waiver request pursuant to the Commission's Rules.<sup>48</sup> CCB states that it and CTC can both operate under the old band plan without causing interference to each other, and both could operate under the new plan without causing interference to each other, but CTC and CCB cannot operate on different spectrum plans without causing interference to each other.<sup>49</sup> CCB

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<sup>37</sup> Letter to Marlene Dortch, Commission Secretary, from Stephen E. Coran, Esq. Paul J. Sinderbrand, Esq., Cheryl A. Tritt, Esq., Donald L. Herman, Jr., Esq., David L. Nace, Esq., and Suzanne S. Goodwyn, Esq. (Jul. 10, 2007) (Joint Proponents Letter), at 2-3, *citing BRS/EBS R&O*, 19 FCC Rcd at 14199 ¶ 76, and *BRS/EBS 3rd MO&O*, 21 FCC Rcd at 5645-5646 ¶¶ 72-73.

<sup>38</sup> Reply Comments of Central Texas Communications, Inc. (filed Jul. 10, 2007) (CTC Reply).

<sup>39</sup> Reply Comments of Sprint Nextel Corporation (filed Jul. 10, 2007) (Sprint Nextel Reply).

<sup>40</sup> Letter from Donald L. Herman, Jr., Esq. and Rebecca L. Murphy, Esq. to Marlene H. Dortch, Secretary, Federal Communications Commission (dated Aug. 6, 2007) (CTC *Ex Parte* Comments).

<sup>41</sup> Supplemental Comments of Sprint Nextel Corporation (filed Aug. 14, 2007) (Sprint Nextel Supplement). CTC has moved to strike these comments as untimely. Central Texas Communications, Inc. Motion to Strike (filed Sept. 12, 2007). Sprint Nextel opposes this motion. Opposition of Sprint Nextel Corporation to Motion to Strike (filed Sept. 14, 2007). We deny CTC's Motion to Strike because Sprint Nextel's supplemental comments were germane and proper.

<sup>42</sup> Supplement to Comments in Opposition to Petition for Waiver, Clearwire Corporation (filed Nov. 10, 2008) (Clearwire Supplement).

<sup>43</sup> NTCA Comments at 3.

<sup>44</sup> *Id.* at 3.

<sup>45</sup> *Id.* at 3-4.

<sup>46</sup> Subscriber Letters.

<sup>47</sup> CCB Comments.

<sup>48</sup> *Id.* at 2. CCB, through lease agreements with the Santa Anna, Coleman, and Panther Creek school districts, broadcasts from Santa Anna, Texas under EBS licenses WLX779, WLX691, and WLX576. CCB Comments at Exhibit No. 2.

<sup>49</sup> *Id.* at 2.

submits a letter from TRC Engineering Services, Inc.<sup>50</sup> in support of CCB's position, and states that CTC and CCB have had to divide the BRS and EBS channels between them from the outset in order to avoid mutually harmful interference to their operations.<sup>51</sup> CCB supports grant of CTC's requested waiver, provided that the Commission treats CCB similarly and affords it the opportunity to obtain a waiver as well.<sup>52</sup>

11. Sprint Nextel<sup>53</sup> and Xanadoo and Clearwire<sup>54</sup> filed comments opposing CTC's waiver request. They argue that CTC does not meet the Commission's waiver standard and has not presented technical evidence to show that its continued operation under the old band plan and technical rules will not cause harmful interference to other 2.5 GHz licensees.<sup>55</sup> Sprint Nextel expresses concern about the impact a waiver would have on its contemplated operations in the Dallas, Fort Worth, San Antonio, and Austin, Texas markets.<sup>56</sup> Xanadoo and Clearwire express similar concern about the impact a waiver could have on Xanadoo's current operations in the Abilene, Texas area and also contemplated operations in the Burnet and Temple, Texas markets, as well as on Clearwire's operations in its GSAs.<sup>57</sup> Sprint Nextel argues that CTC should be required to digitize its system and transition that system to the Middle Band Segment (MBS).<sup>58</sup>

12. The Joint Commenters, along with CTN and NIA, oppose the grant of permanent, unconditioned opt-out waivers of the transition rules going forward.<sup>59</sup> The Joint Commenters argue that the permanent opt-out waiver requests granted to date have foreclosed the ability of 2.5 GHz licensees and consumers in service areas covered by opt-out grants to benefit from changes in technology that may enable transition while still accommodating MVPD operator needs.<sup>60</sup> They request that any opt-out waiver requests deemed meritorious should only be granted a waiver limited in time to no later than December 31, 2008.<sup>61</sup> The Joint Commenters also argue that any waiver should be conditioned upon compliance with existing Part 27 operational and technical rules.<sup>62</sup> The National ITFS Association and

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<sup>50</sup> Letter from Stephen W. Andrews, P.E., Chief Engineer, TRC Engineering Services, Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission (dated June 22, 2007) (TRC Letter), submitted as CCB Comments Exhibit No. 2.

<sup>51</sup> CCB Comments at 2.

<sup>52</sup> *Id.* at 3-4.

<sup>53</sup> Sprint Nextel Opposition. Sprint Nextel holds numerous licenses and spectrum leases in areas adjacent to CTC's systems, and plans to deploy 4G WiMAX wireless broadband services in these areas in 2008. Sprint Nextel Opposition at 2.

<sup>54</sup> Xanadoo/Clearwire Opposition. Xanadoo offers high-speed broadband service using BRS and EBS spectrum in Abilene, Lubbock, and Wichita Falls, Texas and Lawton, Oklahoma, and is constructing wireless broadband systems to serve the Burnet and Temple, Texas markets. Xanadoo/Clearwire Opposition at 3, 5. Clearwire operates wireless broadband systems serving Abilene and Killeen, Texas, and is developing additional networks. Xanadoo/Clearwire Opposition at 5.

<sup>55</sup> Sprint Nextel Opposition at 5, 11-12; Xanadoo/Clearwire Opposition at 1-2.

<sup>56</sup> Sprint Nextel Opposition at 6.

<sup>57</sup> Xanadoo/Clearwire Opposition at 12-13.

<sup>58</sup> Supplemental Comments of Sprint Nextel Corporation (filed Aug. 14, 2007) at 6-8.

<sup>59</sup> Joint Comments at 3.

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *Id.* at 3-4.

the Catholic Television Network support the position of the Joint Commenters.<sup>63</sup> The Waiver Proponents argue that the Joint Commenters are attempting to contravene the Commission's repeated and consistent determinations that waivers of the BRS/EBS band plan transition rules should be considered on a case-by-case basis in light of the facts and circumstances of the particular waiver requests.<sup>64</sup> The Joint Commenters respond that applying a time limitation to any waivers granted would be entirely consistent with the Commission's prior determination that it would follow a case-by-case approach, because it could revisit and extend any waivers if subsequent conditions were to justify doing so.<sup>65</sup>

13. CTC characterizes Sprint Nextel's, Xanadoo's, and Clearwire's concerns as speculative.<sup>66</sup> CTC submits an engineering analysis prepared by T. Lauriston Hardin, P.E., CTC's RF engineer, to buttress CTC's contention that CTC's continued video operations will cause little, if any, interference to neighboring BRS and EBS operations.<sup>67</sup> CTC also submits a spreadsheet to demonstrate that CTC provides video service to five percent or more of the households within CTC's licensed GSAs in the aggregate.<sup>68</sup> CTC argues that while digitizing the MBS would likely afford CTC sufficient channel capacity to accommodate its existing video systems, the cost of approximately \$2 million would be prohibitive.<sup>69</sup> CTC contends that Sprint Nextel, Xanadoo and Clearwire confuse profitability with viability and success, and submits a spreadsheet detailing the costs associated with the deployment of a digital system.<sup>70</sup> CTC argues that the arbitrary sunset date suggested by opponents for any relief granted is contrary to the Commission's established case-by-case waiver analysis.<sup>71</sup>

14. In its supplement, Clearwire provides an engineering statement by James Cornelius asserting that allowing CTC to continue to operate its system would cause interference to Clearwire's systems providing internet access in Killeen, Temple, and Waco, Texas and would impede Clearwire's ability to upgrade those systems to WiMAX technology.<sup>72</sup> Clearwire currently uses an offset channel plan to minimize interference from CTC's system.<sup>73</sup> Once Clearwire upgrades to WiMAX technology, however, it will be unable to use an offset channel plan because there will be no guard band.<sup>74</sup> Mr. Cornelius anticipates two types of interference. The "most destructive" type of interference would be interference from CTC's signal to a base station receiver.<sup>75</sup> The second type of interference would be

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<sup>63</sup> NIA/CTN Letter.

<sup>64</sup> Waiver Proponents Letter at 2-3, *citing BRS/EBS R&O*, 19 FCC Rcd at 14199 ¶ 76, and *BRS/EBS 3rd MO&O*, 21 FCC Rcd at 5645-5646 ¶¶ 72-73.

<sup>65</sup> Joint Commenters Reply at 3. Sprint Nextel and Xanadoo and Clearwire propose similar restrictions. Sprint Nextel Opposition at 8, Xanadoo/Clearwire Opposition at 14-15. Sprint Nextel would limit the duration of any waiver granted to September 1, 2008. Sprint Nextel Opposition at 8.

<sup>66</sup> CTC Reply at 1.

<sup>67</sup> *Id.* at 4 and Exhibit A, Engineering Statement of T. Lauriston Hardin, P.E. (Hardin Statement).

<sup>68</sup> *Id.* at 6-7 and Exhibit B.

<sup>69</sup> *Id.* at 8. In comparison, CTC has elsewhere indicated that its total investment in its network over the past 15 years has been about \$2,000,000. Waiver Request at 6-7.

<sup>70</sup> *Id.* at 8-9 and Exhibit C.

<sup>71</sup> *Id.* at 13-14.

<sup>72</sup> Clearwire Supplement, Engineering Statement of James C. Cornelius (Cornelius Statement) at 1. CTC has moved to strike these comments as untimely. Central Texas Communications, Inc. Motion to Strike (filed Jan. 16, 2009). We deny CTC's Motion to Strike because Clearwire's supplement is germane and proper.

<sup>73</sup> *Id.* at 3.

<sup>74</sup> *Id.*

<sup>75</sup> *Id.* at 2.



interference to Clearwire subscriber locations throughout the system, which is described as “less likely” because the equipment is located within buildings.<sup>76</sup> Mr. Cornelius estimates that granting CTC a waiver would cause Clearwire to lose five percent of its existing subscribers and would cause another 30 percent of its subscribers to suffer degraded performance.<sup>77</sup>

### III. DISCUSSION

15. In the *BRS/EBS R&O*, the Commission found that it is in the public interest to consider waivers of the rules requiring licensees to transition to the new band plan and to comply with the new technical rules.<sup>78</sup> Specifically, the Commission found that it is in the public interest to consider waivers on a case-by-case basis for those operators or their affiliates that meet the definition of a multichannel video programming distributor in Section 522 of the Communications Act of 1934, as amended, and that provide MVPD service to five percent or more of the households within their respective geographic service areas (GSAs).<sup>79</sup> The Commission further found that it is in the public interest to consider waivers for any BRS or EBS licensee that is co-located with any qualified MVPD licensee that elects to opt-out.<sup>80</sup> In addition, the Commission found that it is in the public interest to consider waivers for those BRS licensees that have a viable business for high-powered operations, but who need more than seven digitized high-powered MBS channels to deliver their service to their customers.<sup>81</sup>

16. The Commission stated that, in reviewing requests to waive the rules, it would consider the actions taken by MVPD or BRS licensees to minimize the effect of interference on neighboring markets, as well as the licensee’s explanation as to why it cannot work within the transition rules adopted by the Commission.<sup>82</sup> The Commission stated that waivers will be granted if it is shown that: (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (ii) in view of the unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.<sup>83</sup>

17. At the outset, we agree with the Joint Commenters that opt-out waiver requests should be closely scrutinized to determine what effect such waivers would have on the ability of nearby operators to provide service. The Joint Commenters, however, do not base their proposals to terminate any waivers at the end of 2008 and to require compliance with the post-transition technical rules upon an individual analysis of CTC’s situation. The Joint Commenters have not established that December 31, 2008 is an appropriate date with respect to CTC, nor do they attempt to show that CTC could operate its video system under the post-transition rules. Furthermore, we agree with CTC and the other Waiver Proponents that arbitrarily establishing December 31, 2008 as the outer deadline for any waiver would be inconsistent with the Commission’s decision to evaluate waiver requests on a case-by-case basis. The Joint Commenters’ suggestion that a waiver could be renewed after the end of 2008 if circumstances supported an extension at that time would fail to provide CTC with the certainty it needs to conduct its operations.

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<sup>76</sup> *Id.*

<sup>77</sup> *Id.* at 1.

<sup>78</sup> *BRS/EBS R&O*, 19 FCC Rcd at 14199 ¶ 77.

<sup>79</sup> *BRS/EBS R&O*, 19 FCC Rcd at 14199 ¶ 77. This calculation is made in accordance with the requirements of 47 C.F.R. § 76.905(c).

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*, 19 FCC Rcd at 14199-14200 ¶ 77, 47 C.F.R. § 1.925(b)(3).

Thus, we deny all requests to limit any waiver granted to CTC to December 31, 2008, and proceed with an individual analysis of the merits of CTC's Waiver Request.

18. CTC has not demonstrated that it satisfies either of the specific bases for waiver established in the *BRS/EBS R&O*. CTC is the licensee or lessee of all spectrum in the 2500-2690 MHz band in Goldthwaite, Lohn, and San Saba, Texas, using this spectrum to provide video and broadband services to more than 2,700 subscribers.<sup>84</sup> CTC claims that it serves five percent or more of the households in its GSAs,<sup>85</sup> and submits a spreadsheet based upon which CTC argues that it serves, on an aggregate basis, nine percent of the households in the Goldthwaite, Lohn, and San Saba, Texas GSAs.<sup>86</sup> However, CTC must demonstrate that it meets this criterion in each of its GSAs, and not simply in the aggregate. In addition, it is not clear that CTC's spreadsheet numbers reflect only subscribers receiving MVPD service. Accordingly, we cannot find that CTC qualifies for a waiver on this basis. CTC also has not shown that it needs more than seven digitized channels. CTC concedes that digitizing the MBS would likely afford CTC sufficient channel capacity to accommodate its existing video systems.<sup>87</sup> We therefore consider CTC's request under the general waiver standard contained in Section 1.925 of the Commission's Rules.<sup>88</sup>

19. CTC has shown that, in view of its unusual circumstances, requiring it to transition to the new band plan and technical rules would be inequitable, unduly burdensome, and contrary to the public interest. Initially, we conclude that CTC has made an adequate showing that it has a viable business. CTC has invested almost \$2 million and operated the system for approximately fifteen years. For our purposes, it suffices that CTC is in a position to continue providing service. In doing so, CTC is providing a valuable competitive alternative for 2,700 subscribers in rural Texas. The services CTC offers its subscribers are an important public interest benefit.

20. CTC has also shown that transitioning its system to the new band plan is not a viable option. If forced to transition, CTC will no longer be able to make a case for the provision of video programming, as the channels available in the MBS, absent digitization, are inadequate to devise a successful business plan.<sup>89</sup> CTC states that using only the high-power MBS is cost prohibitive for a rural company with limited resources and a scattered and small subscriber base.<sup>90</sup> CTC notes that it would have to digitize the mid-band channels to deliver enough programming tracks, and while some of the costs of establishing a "digital headend" may be borne by a proponent, the cost of digitizing more than 2700 CPEs would have to be borne exclusively by CTC, and the substantial cost would force CTC out of the video business entirely.<sup>91</sup>

21. CTC has shown that it is in the public interest to grant its Waiver Request. CTC contends that the majority of its subscribers would not be able to receive local over-the-air network broadcasts, including local news and weather information, without CTC's provision of these services through its "wireless cable" system.<sup>92</sup> CTC further notes that even residents who have access to cable modem and DSL services

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<sup>84</sup> Waiver Request at 6.

<sup>85</sup> *Id.*

<sup>86</sup> CTC Reply at 6-7 and Exhibit 2.

<sup>87</sup> *Id.* at 8

<sup>88</sup> 47 C.F.R. § 1.925.

<sup>89</sup> Waiver Request at 8.

<sup>90</sup> *Id.* at 8.

<sup>91</sup> *Id.* See 47 C.F.R. § 27.1237(b) (BRS licensees must pay their own transition costs).

<sup>92</sup> *Id.* at 7.

have found CTC's wireless cable service preferable.<sup>93</sup> CTC states that it is the only operator in the market capable of offering a package of multichannel video programming and broadband services that are fully competitive with those of the incumbent cable operator, and that it is exploring a Voice Over Internet Protocol (VoIP) offering to be provided via CTC's BRS and EBS service.<sup>94</sup> We find that it would be in the public interest to allow CTC to continue providing such services.

22. We have reviewed the technical comments of all parties regarding CTC's request for waiver. None of the parties to this proceeding have made a proper showing as to the extent to which CTC's signal would exceed the 47 dB  $\mu\text{V}/\text{m}$ <sup>95</sup> limit at the boundary of its GSA contained in Section 27.55(a)(4) of the Commission's Rules. While Clearwire has submitted engineering maps that purport to demonstrate line of sight to a portion of its GSA from CTC's base stations,<sup>96</sup> the mere presence of line of sight is insufficient to demonstrate an interference problem. Furthermore, while Clearwire, Sprint Nextel and CTC have provided maps showing areas where they purportedly exceed the 47 dB  $\mu\text{V}/\text{m}$  limit, they have provided these maps without describing any of the underlying data or methodology they used to make their calculations. For example, no party provided the operating parameters for CTC's facilities that they used to calculate CTC's field strengths. Accordingly, it is impossible to verify the accuracy of their engineering exhibits.

23. We conclude, nevertheless, that we have sufficient evidence to support granting CTC a limited waiver of Section 27.55(a)(4) of the Commission's Rules. In other contexts, both Clearwire and Sprint Nextel have stated that they can transition adjacent markets without receiving interference from CTC. Clearwire's Initiation Plan for the San Antonio BTA (BTA401) states that "[s]ince the preliminary engineering analysis revealed no interference conflicts with facilities in adjacent BTAs, no agreements to reconcile or coordinate interference concerns are necessary."<sup>97</sup> Similarly, in its plan to transition the BRS and EBS licensees in the Austin BTA (BTA027) and Dallas-Fort Worth BTA (BTA101), Sprint Nextel stated:

Sprint Nextel has determined that it is unnecessary to transition any BRS/EBS licensees in adjacent or adjoining BTAs in order to avoid interference to the licensees in the markets that are the subject of this Initiation Plan. Our analysis shows that there will be no harmful interference to the transitioned licensees from existing operations outside the BTA.<sup>98</sup>

24. While Sprint Nextel has stated that it has determined it to be necessary to transition certain of CTC's and its lessors' licenses in the Brownwood, Texas and Waco, Texas BTAs,<sup>99</sup> even Sprint Nextel's studies show that the areas within which CTC's existing high-powered operation exceeds the

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<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> In the *BRS/EBS 4th MO&O*, the Commission corrected an error in Section 27.55(a)(4)(i) of the Commission's rules changing the reference from 47 dB[m $\mu$ ]V/m to 47 dB $\mu$ V/m. 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, *Fourth Memorandum Opinion and Order and Second Further Notice of Proposed Rulemaking*, WT Docket No. 03-66, 23 FCC Rcd 5992, 6023 ¶ 84 (2008).

<sup>96</sup> Xanadoo/Clearwire Opposition Exhibit 4, Engineering Statement of George W. Harter, Director of Core RF Engineering, Clearwire Corporation.

<sup>97</sup> Clearwire San Antonio, Texas Initiation Plan at 2.

<sup>98</sup> Sprint Nextel Austin, Texas Initiation Plan at 1; Sprint Nextel Dallas-Fort Worth, Texas Initiation Plan at 1.

<sup>99</sup> Sprint Nextel Brownwood, Texas and Waco, Texas Initiation Plans at 1 and Exhibit A.

power flux density (47 dB $\mu$ V/m signal limit) at its GSA boundary in violation of Section 27.55(a)(4) of the Rules are small scattered areas near the border of CTC's GSAs.<sup>100</sup>

25. With respect to Clearwire's systems in Temple, Killeen, and Waco, Texas, we conclude that allowing CTC to continue operating its system will not cause undue disruption to those systems so long as its operations are limited consistent with CTC's representations. Clearwire's primary concern is interference from CTC's system to its base station receivers.<sup>101</sup> Section 27.1221 of the Commission's Rules, the height benchmarking rule, addresses that issue. That rule limits the signal that a noncompliant transmitting antenna can place at a base station receive antenna that complies with the height benchmark.<sup>102</sup> CTC's engineer states:

should a base station be constructed in the adjacent market along a radial from the CTC station where their height benchmarking contour extends beyond the CTC GSA, then additional analyses will need to be performed to determine if a line of sight exists between the two stations. **If so, then CTC will be required to limit their emissions at the adjacent market base station to -107 dBm.**<sup>103</sup>

That statement is a representation that CTC will comply with the obligations contained in Section 27.1221 of the Commission's Rules. We do not grant CTC a waiver of that rule. Clearwire's and Sprint Nextel's concerns about the harm that would result from waiving that rule are, therefore, moot. In light of the concerns expressed by Sprint Nextel and Clearwire, we emphasize the importance of CTC strictly complying with the height benchmarking rule within the time frame required by that rule.<sup>104</sup>

26. With respect to interference to subscriber equipment, we conclude that such interference is unlikely because Sprint Nextel's analysis shows that CTC would not exceed the 47 dB $\mu$ V/m signal strength limit in the areas where Clearwire operates systems.<sup>105</sup> Finally, we note that CTC has agreed to cooperate with neighboring licensees and is willing to make changes that do not affect its ability to serve its customers.<sup>106</sup> CTC states that, in the unlikely case that its broadband operation does cause harmful interference to neighboring licensees, CTC is willing: (1) to modify its antenna pattern; (2) to synchronize its transmissions with any affected adjacent stations; and (3) to coordinate with any licensee experiencing interference to reduce harmful effects.<sup>107</sup> Under those circumstances, we conclude that a waiver of Section 27.55(a)(4)(i) of the Commission's Rules will not harm Clearwire's service because the areas where CTC exceeds the 47 dB $\mu$ V/m signal strength limit are not in areas where Clearwire operates systems.

27. With respect to potential aggregate harm resulting from the collective grant of pending opt-out waiver requests, we conclude that our grant of opt-out waivers will not, separately or in the aggregate, result in any meaningful harm to Sprint, Clearwire, or other entities that wish to provide advanced broadband services in the 2.5 GHz band. A total of fifteen MVPD opt-out waiver requests have been filed. Those systems collectively serve fewer than 50,000 subscribers and cover only approximately

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<sup>100</sup> See Reply Comments of Sprint Nextel Corporation, Engelman Statement, Figures 1, 12, and 23.

<sup>101</sup> Cornelius Statement at 2.

<sup>102</sup> 47 C.F.R. § 27.1221(c).

<sup>103</sup> Hardin Statement at 2 (emphasis added).

<sup>104</sup> See 47 C.F.R. § 27.1221(c)(ii).

<sup>105</sup> See Reply Comments of Sprint Nextel Corporation, Engelman Statement, Figure 23.

<sup>106</sup> Waiver Request at 10, 13.

<sup>107</sup> Waiver Request at 10.

160 out of 5,289 active BRS and EBS licenses. Given the largely rural locations for which waivers have been sought, and our conclusions that the waivers we have granted to date will have relatively minimal impact on nearby licensees, we believe our decisions will not adversely impact licensees who wish to use this band for low-power, cellularized broadband services, even if all of the waivers were ultimately granted. If the licensees requesting opt-out waivers had chosen instead to provide low-power cellularized services, nearby licensees would still have been required to protect the service areas of the opting-out licensees. Finally, since the deadline for filing opt-out waiver requests has expired,<sup>108</sup> licensees who wish to offer low-power, cellularized broadband services can now plan with certainty knowing that no other such requests will be entertained.

28. We have reviewed the conditions proposed by CTC. We find that it is not necessary to give CTC an open-ended waiver of the rules relating to power limits. Rather, the better approach is to limit waiver of that rule to allow CTC to maintain its current operations. Also, because CTC operates an analog video system, it is unnecessary to waive Section 27.53(l)(3) of the rules, which concerns digital video programming. Finally, for the reasons described above, we conclude that a waiver of Section 27.1221 of the Commission's Rules is unnecessary. Therefore, we grant CTC's Waiver Request to the following extent with the following conditions:

- CTC and its channel lessors will be permitted to continue operating pursuant to Section 27.1209 on the "pre-transition" BRS/EBS band plan set forth in Section 27.5(i)(1);
- CTC and its channel lessors will participate in good faith in any transition planning process relating to any geographic area that overlaps their GSAs. In conjunction with any transition, CTC and its channel lessors will subsequently make such modifications to their facilities at the proponent's expense as the proponent may reasonably request in an effort to reduce interference to licensees in other markets that are transitioning, provided that such modifications can be accomplished without cumulatively resulting in more than a *de minimis* reduction in CTC's ability to serve its then-existing subscribers;
- Every main, booster, and base station currently used in conjunction with CTC's system shall be permitted to continue operating at the EIRP used as of April 11, 2007;
- Any channel used for the transmission of video programming on CTC's system shall be permitted to continue operating under the "pre-transition" emission limits for analog video programming channels set forth in Section 27.53(l)(1). In addition, per Section 27.53(l)(5), CTC and its channel lessors shall be permitted to operate fixed, temporary fixed and mobile data stations deployed as of January 10, 2005, provided that those facilities are in compliance with the emission limits set forth in former Section 21.908 and 74.936;
- Sections 27.1220 (regarding the 5.5 MHz wide channels in the LBS and UBS) and 27.1222 (regarding the establishment of guardbands around the MBS) shall not be applicable to CTC and its channel lessors; and
- Section 27.55(a)(4)(i) of the Commission's Rules is waived to allow CTC and its channel lessors to continue their current operations within the Goldthwaite, Lohn, and San Saba, Texas Geographic Service Areas.

29. With respect to CCB's request that we grant it a waiver similar to any granted CTC, we note that CCB concedes that it does not meet the FCC's waiver standard.<sup>109</sup> In any event, CCB has

<sup>108</sup> See 47 C.F.R. § 27.1231(g) (establishing April 30, 2007 deadline).

<sup>109</sup> CCB Comments at 2.

clearly failed to meet the deadline established for filing opt-out waiver requests. We emphasize that our decision is not based on the form in which CCB submitted its pleading but on CCB's failure to submit a timely waiver request with the necessary information. Accordingly, we will not grant CCB's request, and CCB must fully participate in the transition process for its BTA.

30. We also dismiss Sprint Nextel's Brownwood, Texas Transition Initiation Plan. Because we have given CTC authority to opt out of the transition, Sprint Nextel may not unilaterally transition CTC's stations to the new band plan. Since all of the licenses contained in the Brownwood Transition Initiation Plan are licensed or leased to CTC, we will dismiss that plan as moot.

#### IV. CONCLUSION AND ORDERING CLAUSES

31. For the reasons discussed above, we conclude that CTC has demonstrated that partial grant of the requested waiver would be in the public interest. We further conclude that requiring CTC to transition to the new band plan would be inequitable, unduly burdensome and contrary to the public interest because it would be required to discontinue its existing service to customers.

32. ACCORDINGLY, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, 47 U.S.C. § 154(i), and Sections 0.131, 0.331, 1.925 and 27.1231(g) of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331, 1.925, 27.1231(g), that the Request for Waiver filed by Central Texas Communications, Inc. on April 11, 2007 IS GRANTED to the extent indicated herein and in all other respects IS DENIED.

33. IT IS FURTHER ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, 47 U.S.C. § 154(i), that the Motions to Strike filed by Central Texas Communications, Inc. on September 12, 2007 and January 16, 2009 ARE DENIED.

34. IT IS FURTHER ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, 47 U.S.C. § 154(i), and Section 27.1231 of the Commission's Rules, 47 C.F.R. § 27.1231, that the transition initiation plan filed by Sprint Nextel Corporation on February 12, 2007 for the Brownwood, Texas BTA IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Jane E. Jackson  
Associate Chief, Wireless Telecommunications Bureau