

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

In the Matter of
COLEMAN COUNTY BROADCASTING, 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: May 7, 2014

Released: May 8, 2014

By the Deputy Chief, Broadband Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. In this Memorandum Opinion and Order, we grant a request filed by Coleman County Broadcasting, Inc. ("CCB"), a wireless cable provider in Santa Anna, Texas, to opt out of the transition to the Commission's new technical rules governing Broadband Radio Service (BRS) and the Educational Broadband Service (EBS) in the 2590-2600 MHz band. The waiver will allow CCB to continue providing local television stations retransmitted from Abilene, Texas or San Angelo, Texas who would otherwise be unable to receive local television service. We also limit the conditions associated with the waiver to minimize the impact of the waiver on neighboring licensees.

II. BACKGROUND

2. CCB, through lease agreements with the Santa Anna, Coleman, and Panther Creek school districts, operates a wireless cable system using leased EBS spectrum from a site in Santa Anna, Texas under EBS licenses WLX779, WLX691, and WLX576. CCB's system provides 10 video channels to approximately 300 customers in the Santa Anna area for \$13.00/month. All four of the local stations in Abilene and San Angelo are retransmitted over CCB's wireless cable service. CCB began providing this service in 1994 because the terrain in the Santa Anna area shields the community from being able to receive local television signals over the air. CCB's system is located in the southeastern corner of the Abilene Basic Trading Area (BTA).

1 Petition for Waiver, Coleman County Broadcasting, Inc. (filed Jun. 30, 2010) (Waiver Request) at 2-3.

2 Id. at 2.

3 See Educational Service Exhibit, File Nos. 0004934784, 0004934813, and 0004934821 (filed Nov. 1, 2011) at 1 n.2.

4 Waiver Request at 2.

5 Id.

3. On July 29, 2004, the Commission released a *Report and Order and Further Notice of Proposed Rulemaking* that transformed the rules and policies governing the licensing of services in the 2500-2690 MHz band.⁶ 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.⁷ In most areas of the country, however, the deployment of wireless cable was not successful.

4. 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.⁸ 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).⁹ The channel configuration and the technical rules for the LBS and UBS are designed to permit a range of wireless services.¹⁰ 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.¹¹ 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.¹² 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 waivers 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.¹³ On April 27, 2006, the Commission released the *Third Memorandum Opinion and Order and Second Report and Order*, in which it affirmed its decision to consider these waivers on a case-by-case basis.¹⁴ The Commission further held that an MVPD provider that wishes to opt out of the transition must file a

⁶ 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*).

⁷ 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*).

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

⁹ *Id.* at 14169 ¶ 6.

¹⁰ *Id.* at 14168 ¶ 4.

¹¹ *Id.* at 14185-14186 ¶ 4.

¹² *Id.* at 14197-14198 ¶ 72.

¹³ *Id.* at 14199-14200 ¶ 77.

¹⁴ 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 *BRS/EBS 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 5650 ¶ 84.

waiver request within sixty days after an initiation plan is filed with the Commission, or April 30, 2007, whichever is earlier.¹⁵

5. On February 14, 2007, Clearwire Spectrum Holdings, LLC (Clearwire) filed a transition initiation plan for the Abilene BTA.¹⁶ On April 11, 2007, Central Texas Communications, Inc. (CTC), CCB's neighbor operating in the Brownwood, Texas BTA, which is adjacent to the Abilene, Texas BTA, filed a request for an opt-out waiver.¹⁷ In commenting upon CTC's waiver request, CCB stated that while it found itself in the same position as CTC, CCB did 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.¹⁸ CCB stated, CCB and CTC could 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.¹⁹

6. On April 17, 2009, the Bureau granted CTC's request.²⁰ With respect to CCB, the Bureau said:

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. In any event, CCB has 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.²¹

7. On May 14, 2009, CCB filed an Application for Review of the Bureau's April 17, 2009 decision denying CCB an opt-out waiver request as untimely filed.²² On May 22, 2009, Clearwire withdrew its transition initiation plan for the Abilene BTA²³ because of issues regarding CCB's desire to opt out of the transition.²⁴

¹⁵ *Id.* at 5646 ¶ 74.

¹⁶ Letter from Terri B. Natoli, V.P. Regulatory Affairs & Public Policy, Clearwire Corporation to Office of the Secretary, Federal Communications Commission, WT Docket No. 06-136 (filed Feb. 14, 2007).

¹⁷ Petition for Waiver, Central Texas Communications, Inc. (filed Apr. 11, 2007) (CTC Waiver Request).

¹⁸ Comments of Coleman County Broadcasting on Petition for Waiver at 2 (filed Jun. 25, 2007) (CCB Comments).

¹⁹ *Id.*

²⁰ Central Texas Communications, Inc., *Memorandum Opinion and Order*, 24 FCC Rcd 4715 (WTB 2009) (CTC MO&O).

²¹ *Id.* at 4727-4728 ¶ 29 (footnote omitted).

²² Application for Review, Coleman County Broadcasting, Inc. (filed May 14, 2009) (AFR).

²³ Letter from Nadja S. Sodos-Wallace, Senior Regulatory Counsel, Assistant Secretary, Clearwire Corporation to Office of the Secretary, Federal Communications Commission, WT Docket No. 06-136 (filed May 22, 2009).

²⁴ *See* Self-Transition Notification, License B003, NSAC, LLC, WT Docket No. 06-136 (filed May 29, 2009) at 1.

8. On June 4, 2010, the Commission granted, in part, CCB's application for review.²⁵ The Commission recognized that failure to afford CCB an opportunity for relief would likely result in the discontinuance of CCB's service once the transition for the Abilene BTA is finally completed.²⁶ The Commission gave CCB 30 days from the release date of the *CCB MO&O* to petition for waiver to opt-out of the transition to the new BRS/EBS band plan.²⁷ The Commission held that CCB's waiver request must contain a full description of the technical parameters of its system, list the rules it needs waived, and analyze the impact a waiver might have on neighboring licensees.²⁸

9. On June 30, 2010, CCB filed a request for a waiver to opt-out of the transition of the 2500-260 MHz band.²⁹ CCB argues that because CTC has been granted a permanent "opt-out" waiver by the Commission, the need to avoid mutually destructive interference and other compelling public interest considerations dictate that CCB likewise be granted a similar "opt-out" waiver.³⁰ CCB further argues that a grant of a permanent waiver will not adversely affect adjacent operations because CTC is the closest system and because the rest of the BRS and EBS licensees in the Abilene BTA are terrain shielded from CCB's operations.³¹ Finally, CCB argues that it should be granted a permanent waiver because it is the sole source in the community for receiving only local television stations.³² Thus, CCB asks on behalf of itself and Santa Anna Independent School District, Coleman Independent School District, and Panther Creek Consolidated School District, its EBS lessors, that the following rules be permanently waived:³³

- Section 27.1230 of the rules should be waived to the extent it requires CCB and its EBS licensees to transition from the frequencies specified in Section 27.5(i)(1) to the frequencies specified in Section 27.5(i)(2).
- Section 27.1220 of the rules should be waived to the extent it limits EBS channels to a bandwidth of 5.5 MHz.
- The height benchmarking obligations and related requirements of Section 27.1221 should be waived (since CCB and CTC have transmitters located within each other's 35-mile GSA, the required height benchmarking is not technically feasible).
- Section 27.1222 should be waived to the extent it requires guardbands in the 2568-2572 and 2614-2618 MHz bands and makes transmissions in those bands secondary to adjacent channel transmissions.

²⁵ Central Texas Communications, Inc. and Coleman County Broadcasting, Inc. *Memorandum Opinion and Order*, 25 FCC Rcd 7644 at ¶ 1 (2010) (*CCB MO&O*).

²⁶ *Id.* at 7649 ¶ 13.

²⁷ *Id.*

²⁸ *Id.* at 7650 ¶ 14.

²⁹ Waiver Request.

³⁰ *Id.* at 5-6.

³¹ *Id.*

³² *Id.* at 2-3.

³³ *Id.* at 4-5.

Section 27.55(a)(4)(i) should be waived to the extent necessary to allow CCB and its EBS lessors to continue their current operations within the Santa Anna Geographic Service Areas.

10. In addition, CCB asks that the following terms and conditions be made applicable to CCB's and its EBS lessors' operations under the "opt-out" waiver:³⁴

- Pursuant to Section 27.1209 of the rules, CCB and the EBS licensees should be specifically authorized to operate on the pre-transition band plan set forth in Section 27.5(i)(1).
- CCB and the EBS licensees should be authorized to continue operating at their current EIRP power levels pursuant to Section 27.50(h)(i) and (ii) of the rules.
- All channels in CCB's system should be permitted to continue operating under the "pre-transition" emission limits for analog video programming channels set forth in Section 27.53(l)(1) of the rules.³⁵
- CCB and its EBS lessors will participate in good faith in any transition process relating to any geographic area that overlaps their GSA. In conjunction with any such transition, CCB and its EBS 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 CCB's ability to serve its then-existing customers.
- CCB and the EBS licensees should be authorized to continue operating pursuant to Section 27.55(a)(4)(i) of the rules limiting the signal strength along the GSA boundary to the greater of their current EIRP power levels (as described in Exhibit 1 of CCB's Waiver Request) or 47 dBuV/m.

11. On July 9, 2010, the Bureau's Broadband Division released a public notice seeking comment on the Waiver Request.³⁶ On July 23, 2010, Clearwire Corporation (Clearwire) opposed CCB's Waiver Request.³⁷ Clearwire argues that CCB does not meet the standard enunciated by the Commission in the *BRS/EBS Report and Order* and does not meet the additional requirements established by the Commission in the WATCH TV Opt-Out Waiver Order.³⁸ Clearwire also alleges that its wireless broadband system in the Abilene, Texas area is receiving interference at two base station sites (ALB018 and ALB021) in the eastern edge of its service area.³⁹ If the Bureau decides to grant CCB's opt-out waiver request, Clearwire asks that the Bureau limit the scope of the waiver.⁴⁰ Specifically, Clearwire

³⁴ *Id.*

³⁵ In fact, the applicable rule is 47 C.F.R. § 27.53(m)(1).

³⁶ Wireless Telecommunications Bureau Seeks Comment on Request by Coleman County Broadcasting (CCB) for Waiver of the Requirement to Transition to the New BRS/EBS Band Plan, *Public Notice*, 25 FCC Rcd 9098 (WTB BD 2010).

³⁷ Opposition to and Comments on Request for Waiver, Clearwire Corporation (filed Jul. 23, 2010) (Clearwire Opposition).

³⁸ *Id.* at 2-4.

³⁹ *Id.*, Clearwire Engineering Statement Opposing CCB MVPD Opt-Out.

⁴⁰ *Id.* at 4-6.

objects to permitting CCB to (1) operate pursuant to the maximum EIRP limits set forth for “pre-transition” operations, (2) operate pursuant to pre-transition emission limits, (3) operate field strengths along adjacent service area boundaries at the signal strength of 47 dBuV/m or the strength authorized in underlying licenses as of January 10, 2005, and (4) ignore the height benchmarking obligations set forth in Section 27.1221.⁴¹ In addition, Clearwire asks the Bureau to specify that the waiver expires in the event CCB ceases to operate its Santa Anna system, and to review whether it is in the public interest to continue the waiver in the event that CCB seeks to transfer or assign its license.⁴²

12. CTC supports CCB’s waiver request, subject to the following conditions.⁴³ First, CTC asks that the Bureau impose the same conditions on CCB that it imposed on CTC when it granted CTC’s waiver request in April 2009.⁴⁴ Second, CTC asks the Bureau to require CCB to work in good faith with CTC and its engineers to eliminate or otherwise minimize any harmful interference caused by CCB including modifying its antenna pattern, synchronizing its transmissions with any affect adjacent stations, and coordinating with CTC to reduce harmful effects.⁴⁵ Third, CTC asks that the Bureau deny CCB’s request to waive the height benchmarking rule (Section 27.1221 of the Commission’s Rules).⁴⁶

III. DISCUSSION

13. 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.⁴⁷ 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).⁴⁸ 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.⁴⁹ 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.⁵⁰

14. 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.⁵¹ The Commission stated that waivers will be granted if it is shown that: (i) the underlying

⁴¹ *Id.* at 4.

⁴² *Id.* at 5-6.

⁴³ Comments of Central Texas Communications, Inc. (filed Jul. 26, 2010) (CTC Comments).

⁴⁴ *Id.* at 1.

⁴⁵ *Id.* at 5.

⁴⁶ *Id.* at 4.

⁴⁷ *BRS/EBS R&O*, 19 FCC Red at 14199 ¶ 77.

⁴⁸ *Id.* This calculation is made in accordance with the requirements of 47 C.F.R. § 76.905(c).

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

purpose of the rules(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.⁵²

15. As a preliminary matter, we find that CCB complied with the conditions contained in the *CCB MO&O*. CCB timely filed its opt-out waiver request on June 30, 2010. CCB's Waiver Request fully described the technical parameters of its system,⁵³ listed the rules that it needed to be waived,⁵⁴ and analyzed the impact that a waiver might have on neighboring licensees.⁵⁵

16. We reject Clearwire's argument that CCB's waiver request should be denied because CCB does not meet the standard for an opt-out waiver requests enunciated by the Commission in the *BRS/EBS Report and Order*. The Commission, in the *CCB MO&O*, stated that even though CCB did not meet the opt-out waiver standard enunciated by the Commission in the *BRS/EBS R&O*, CCB could have sought a waiver under the Commission's general waiver standard.⁵⁶ Specifically, as the Commission stated in the *CCB MO&O*, Section 1.925 of the Rules gives the Commission flexibility in implementing the rules that the Commission adopts under the Communications Act.⁵⁷ According to the Commission, CCB was always free to request such flexibility and seek a waiver under the general waiver standard.⁵⁸ The Commission noted that several other MVPDs filed timely waiver requests notwithstanding the fact that they did not allege they complied with either of the specific tests enunciated by the Commission.⁵⁹ Thus, as the Commission stated in the *CCB MO&O*, CCB could have sought a timely waiver under the Commission's general waiver authority in Section 1.925 of the Commission's Rules rather than the opt-out waiver standard enunciated by the Commission in the *BRS/EBS R&O*.⁶⁰

17. We further reject Clearwire's argument that CCB's waiver request should be denied because it does not meet the additional requirements allegedly set forth by the Commission in the WATCH TV opt-out waiver order.⁶¹ In granting WATCH TV's opt-out waiver request, the Commission did not impose additional requirements on opt-out waiver requests.⁶² Specifically, the Commission found it relevant to WATCH TV's waiver request that the BTA holder supported WATCH TV's waiver request

⁵² *Id.*, 19 FCC Rcd at 14199-14200 ¶ 77, 47 C.F.R. § 1.925(b)(3).

⁵³ Waiver Request at Exhibit No. 1.

⁵⁴ Waiver Request at 4-5.

⁵⁵ *Id.* at 5-6.

⁵⁶ *CCB MO&O*, 25 FCC Rcd at 7648 ¶ 11.

⁵⁷ *Id.* at 7649 ¶ 11.

⁵⁸ *Id.*

⁵⁹ *Id. citing* Dakota Central Telecommunications Cooperative, *et al.*, *Memorandum Opinion and Order*, 24 FCC Rcd 4729 (WTB 2009) (partially granting request by Dakota Central Telecommunications Cooperative for a permanent waiver to opt out of the transition for its MVPD system in Brush Hill, ND); United Telephone Mutual Aid Corporation, *Memorandum Opinion and Order*, 24 FCC Rcd 4743 (WTB 2009) (granting request by United Telephone Mutual Aid Corporation for a permanent waiver to opt out of the transition for its MVPD systems in Milton and Egeland, North Dakota).

⁶⁰ *CCB MO&O*, 25 FCC Rcd at 7649 ¶ 11.

⁶¹ Clearwire Opposition at 3-4.

⁶² *BRS/EBS 3rd MO&O*, 21 FCC Rcd at 5646-5650 ¶¶ 75-84.

and that WATCH TV held all of the BRS and EBS spectrum in the Lima, Ohio geographic area.⁶³ While the Commission may have found these factors to be significant in the WATCH TV case, the Commission stated that waivers would be considered on a case-by case basis.⁶⁴ Thus, the Commission did not conclude in the WATCH TV waiver request that petitioners for opt-out waivers must demonstrate that the BTA license holder supported the waiver request or that they must hold all of the spectrum in a given geographic area.

18. Turning to the Waiver Request, we find that in view of its unusual circumstances, requiring CCB to transition to the new band and technical rules would be inequitable, unduly burdensome, and contrary to the public interest. We find that CCB has shown that because of the manner in which the CCB system and the CTC systems were designed, both systems must operate on the same band plan. We further find that CCB has shown that because CTC was granted a waiver to permanently operate on the pre-transition band plan, subject to several conditions, CCB must also operate on the pre-transition band plan or cease operations altogether. To support its position that it must operate under the pre-transition band plan or cease operations, CCB submitted a letter from Stephen Andrews, Chief Engineer for TRC Engineering Services, Inc.⁶⁵ Mr. Andrews states that because the tower site for CTC's Stations WLX564, WLX756, and WLX567 in Lohn, Texas is 34 miles from CCB's Santa Anna, Texas site, the A-group, the C-group, and Channels G1 and G2 were assigned to CTC's Lohn transmitter location, while the B-group, the D-group, and Channels G3 and G4 were assigned to CCB's Santa Anna location.⁶⁶ Under this plan, Mr. Andrews stated, there have been no interference issues with CTC or any other licensee or lessee in the Brownwood, San Angelo, or Abilene BTAs.⁶⁷ If CCB is required to transition to the new plan, however, Mr. Andrews states that interference between CCB and CTC would occur in Coleman, McCulloch, and Brown Counties.⁶⁸ This claim is uncontroverted by Clearwire or CTC.

19. We further find that although CCB provides only 10 channels of local programming, it is economically infeasible for it to digitize the three Mid-Band channels that it leases. CCB provides this service, at loss, as a service to the community to approximately 300 customers for \$13/month, which is approximately \$46,899 per year.⁶⁹ Because CCB reports that it would cost approximately \$400,000 for new digital transmission equipment to provide service under the new spectrum plan,⁷⁰ we find that it is not economically feasible for CCB to digitize its channels.

20. We find that CCB has shown that it is in the public interest to grant its waiver request. CCB has been providing this service since 1994 because the terrain in the Santa Anna area shields the community from being able to receive local television stations over the air.⁷¹ As described above, CCB provides this service to the community at a loss.⁷² Although DISH Network does provide local channels

⁶³ *Id.*, 21 FCC Rcd at 5646-5650 ¶ 83.

⁶⁴ *BRS/EBS R&O*, 19 FCC Rcd 14165, 14199 ¶ 77 *aff'd BRS/EBS 3rd MO&O*, 21 FCC Rcd 5606, 5645-5646 ¶ 72.

⁶⁵ Waiver Request at Exhibit No. 2.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ Waiver Request at 2.

⁷⁰ *Id.* at 6.

⁷¹ *Id.* at 2.

⁷² *Id.*

as an option to customers subscribing to the first DISH Network's first tier of programming, CCB reports that it is the only source in the community for receiving only local television stations.⁷³

21. Although CCB has shown that it is in the public interest to grant its waiver request, we agree with Clearwire and CTC that CCB's waiver should be limited in a manner that permits it only to continue its current operations. Based on staff analysis of CCB's, CTC's and Clearwire's systems, we find that CCB does not need a waiver of Section 27.1221 of the Commission's Rules, the height benchmarking rule. Section 27.1221 of the Commission's Rules protects base station receivers operating in the 2496-2690 MHz band, if the receivers are under the height benchmark.⁷⁴ Because CTC is operating a one-way only video service, and therefore has no base station receivers, Section 27.1221 does not apply to CCB's operations with respect to CTC. With respect to Clearwire's claim of interference to its broadband system in the Abilene, Texas area, we find that Clearwire's ABL018 and ABL021 sites are not entitled to interference protection because both sites exceed their height benchmark limits with respect to CCB's GSA.⁷⁵ If a base station receiver exceeds the height benchmark with respect to a neighboring GSA, it is not entitled to claim interference protection from that neighboring station.⁷⁶ Since CCB is currently in compliance with Section 27.1221, we deem it unnecessary to waive that rule to allow CCB to continue its operations.

22. We further find that CCB does not need a waiver of Sections 27.50(h)(1)(i) and (ii), or 27.55(a)(4)(i) of the Commission's rules because CCB's current operations are in compliance with each of those rules. Although Clearwire claims that it is receiving interference from CCB's current operations, without waivers of Sections 27.50(h), 27.55(a)(4), or 27.1221, CCB cannot cause any more interference to Clearwire or other licensees in adjacent areas than if it transitioned to the new band plan. We will waive Section 27.53(m)(1) of the Commission's Rules to the extent necessary to allow CCB to continue its existing operations. CCB's existing operations are compatible with CTC's operations, and there are no other operations that would be subject to adjacent channel interference from CCB.

23. We deny Clearwire's request that we specify that the waiver expires if CCB ceases to operate its Santa Anna system.⁷⁷ Although CCB has sought an opt-out waiver, it is doing so on its own behalf and on the behalf of its licensees/lessors, the Santa Anna, Coleman, and Panther Creek school districts. If CCB ceases to operate its system, and no longer needs an opt-out waiver, CCB and its licensees/lessors may determine for themselves if and when they should transition to the new band plan and technical rules. We further deny Clearwire's request that we review whether it is in the public interest to continue the waiver in the event that CCB seeks to transfer or assign its license.⁷⁸ As indicated above, CCB is not a BRS or an EBS licensee, but provides its wireless cable service through spectrum it leases from the three school districts mentioned above.

⁷³ *Id.* at 2-3.

⁷⁴ 47 C.F.R. § 27.1221(c).

⁷⁵ *See* 47 C.F.R. § 27.1221(b) for an explanation as to how the height benchmark is calculated. Bureau staff used the technical information contained in the Waiver Request and Clearwire Opposition to calculate the height benchmark.

⁷⁶ *See* 47 C.F.R. § 27.1221(e).

⁷⁷ *See* Clearwire Opposition at 5-6.

⁷⁸ *See id.* at 6.

24. We reject CTC's request to impose the same conditions on CCB that were imposed on CTC.⁷⁹ As we stated above, the Commission decided to review opt-out waiver requests on a case-by-case basis. CTC and CCB are not similarly situated, and CCB's waiver is specifically designed to permit it to operate its current system. Nevertheless, because we have waived only those rules necessary for CCB to operate its current system, CTC's current operations should not be affected by grant of a limited waiver to CCB. We reject CTC's request that we require CCB to formally condition the waiver on requiring CCB to work in good faith with CTC and its engineers to eliminate or otherwise minimize any harmful interference caused by CCB including modifying its antenna pattern, synchronizing its transmissions with any affected adjacent stations, and coordinating with CTC to reduce harmful effects, as beyond the scope of the waiver requested and the rules addressing operations under the pre-transition band plan and technical rules. We note that we did not impose a similar condition on CTC. Consistent with our grant of other waivers to MVPD operators, and as CCB requested in the Waiver Request, we will impose a condition requiring CCB to cooperate with other transitioning licensees.

25. Therefore, we grant CCB's Waiver Request with the following conditions:

- CCB 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);
- CCB 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, CCB 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 CCB's ability to serve its then-existing subscribers; and
- Any channel used for the transmission of analog video programming on CCB'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(m)(1).
- 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 CCB and its channel lessors.

IV. CONCLUSION AND ORDERING CLAUSES

26. For the reasons discussed above, we conclude that CCB has demonstrated that partial grant of the requested waiver would be in the public interest. We further conclude that requiring CCB 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.

⁷⁹ CTC Comments at 1-2.

27. 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 Coleman County Broadcasting on June 30, 2019 IS GRANTED to the extent indicated herein and in all other respects IS DENIED.

28. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

John J. Schauble
Deputy Chief, Broadband Division
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