

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

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

THIRD REPORT AND ORDER

Adopted: June 1, 2010

Released: June 3, 2010

By the Commission:

I. INTRODUCTION

1. In this *Third Report and Order*, we provide Broadband Radio Service (BRS) licensees that are awarded new initial licenses on or after November 6, 2009 a reasonable period of time to meet our construction requirement -- four years from the date of initial license grant -- while ensuring that spectrum is placed in use for the benefit of consumers. In addition, we revise our construction rule to conform the text to previous decisions made by the Commission in this proceeding. These revisions will provide greater clarity to BRS and Educational Broadband Service (EBS) licensees in complying with our construction requirement.

II. BACKGROUND

A. General Background

2. When adopting performance obligations for licensed services, the Commission's general practice has been to require that such obligations be met at a deadline measured in some period of time from the issue of the license (*e.g.*, a licensee may have to demonstrate substantial service within five years from issue of the license). Under the rules formerly applicable to the Multipoint Distribution Service (MDS), which became the BRS in 2004, holders of incumbent BRS licenses were required to complete construction within twelve months of the date of license grant.¹ These former rules also provided that "within five years of the grant of a BTA authorization, the authorization holder must construct MDS stations to provide signals . . . that are capable of reaching at least two-thirds of the population of the applicable service area."² When the Commission sought comment on the rules for BRS and EBS in 2003, it suspended performance requirements applicable to the band.³ Subsequently, in April 2006, the

¹ See 47 C.F.R. § 21.43(a) (2001).

² 47 C.F.R. § 21.930(c)(1).

³ *BRS/EBS NPRM & MO&O*, 18 FCC Rcd at 6805 ¶ 200-201. Because the existing MDS and ITFS licenses were issued on various dates, the dates on which applicable performance requirements came due also varied.

Commission adopted May 1, 2011 as the uniform date by which all BRS BTA authorization holders and incumbent BRS and EBS licensees must demonstrate substantial service.⁴

3. The Commission adopted May 1, 2011 as the date for BRS licensees to demonstrate substantial service because it is the date that renewal applications for incumbent BRS licenses are due.⁵ Moreover, May 1, 2011 is approximately five years from the date of release of the *BRS/EBS Second Report and Order*, which gave existing BRS licensees five years to build out their systems, while they simultaneously transitioned to the new band plan and technical rules.⁶ The Commission concluded that requiring BRS licensees to demonstrate substantial service by May 1, 2011 struck the appropriate balance between ensuring that the band is promptly placed in use and giving licensees fair opportunity to transition their facilities.⁷ The Commission required that BRS incumbent licensees file their demonstration of substantial service with their respective renewal applications.⁸

4. On April 24, 2009, the Bureau announced Auction 86, in which it intended to auction 78 BRS BTA licenses, 75 of which will be overlay licenses that were originally offered in Auction 6 and are now available as a result of default, cancellation, or termination.⁹ Three additional licenses were created by the Commission in the *BRS/EBS Fourth MO&O*, when the Commission amended its rules to establish three Gulf of Mexico Service Areas for BRS.¹⁰ The auction of these 78 BRS licenses began on October 27, 2009, and on November 6, 2009, the Wireless Telecommunications Bureau announced the closing of the auction.¹¹ Under the rules adopted by the Commission in 2006, winners of licenses in Auction No. 86 would be required to demonstrate substantial service on or before May 1, 2011.¹² Comments to the Auction PN raised the issue of whether the May 1, 2011 substantial service deadline should be applied to winners of licenses in Auction 86. Thus, the Commission released the BRS/EBS Third FNPRM seeking comment on this issue.

5. In the *BRS/EBS Third FNPRM*, we tentatively concluded that we should require applicants that win BRS licenses in Auction 86, and any subsequent auction of BRS licenses, to demonstrate substantial service on or before four years from the dates their respective licenses are granted.¹³ We tentatively concluded that a four-year time period would allow new licensees sufficient time to build out their systems and put the spectrum to use.¹⁴ We also proposed to revise the introductory

⁴ *Id.* at 5731-5733 ¶¶ 299-304.

⁵ *Id.* at 5733 ¶ 304.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ See *Auction of Broadband Radio Service (BRS) Licenses Scheduled for October 27, 2009 Comment Sought on Competitive Bidding Procedures for Auction 86, Public Notice*, AU Docket No. 09-56, 24 FCC Rcd 4605 (WTB 2009) (*Auction Public Notice*).

¹⁰ *BRS/EBS Fourth MO&O*, 23 FCC Rcd at 6038-6040 ¶¶ 122-128.

¹¹ *Auction Public Notice. Auction of Broadband Radio Service (BRS) Licenses Closes Winning Bidders Announced for Auction 86, Public Notice*, AU Docket No. 09-56, DA 09-2378 (WTB 2009) (*Closing Public Notice*).

¹² See 47 C.F.R. § 27.14(o).

¹³ 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, *Fifth Memorandum Opinion and Order and Third Further Notice of Proposed Rulemaking*, WT Docket No. 03-66, 24 FCC Rcd 12258, 12269 ¶ 26 (2009) (*BRS/EBS Third FNPRM*).

¹⁴ *Id.*

text to Section 27.14(o) of the Commission's Rules to state more clearly the Commission's intent to allow BRS or EBS licensees to demonstrate substantial service if their respective lessees met one of the safe harbors adopted by the Commission¹⁵ and to allow licenses to be combined for purposes of demonstrating substantial service under certain circumstances.¹⁶

6. Comments on the *BRS/EBS Third FNPRM* were due October 13, 2009, and reply comments were due October 23, 2009.¹⁷ We received comments from Clearwire,¹⁸ The Engineers for the Integrity of Broadcast Auxiliary Services Spectrum (EIBASS),¹⁹ Gateway Telecom LLC dba StratusWave Communications (StratusWave),²⁰ James McCotter (McCotter),²¹ N-1 Communications, LLC (N-1),²² and WCA.²³ EIBASS²⁴ and WCA²⁵ filed reply comments.

B. Comments re Extension of Substantial Service Deadline for New Initial BRS Licenses

7. WCA, StratusWave, and N-1 support the proposal to give four years to demonstrate substantial service for new initial BRS licenses.²⁶ WCA believes that the Commission's proposal "represents a reasonable compromise among the disparate views that were expressed in response to the [*Auction Public Notice*]."²⁷ WCA agrees with the Commission's tentative conclusion that allowing new licensees ten years to demonstrate substantial service would be excessive and result in

¹⁵ *BRS/EBS Third FNPRM*, 24 FCC Rcd at 12270 ¶ 28.

¹⁶ See *BRS/EBS Fourth MO&O*, 23 FCC Rcd at 6047-6048 ¶¶ 144-145.

¹⁷ See *Facilitating the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150–2162 and 2500–2690 MHz Bands*, 74 FR 49356, 49357 (Sep. 28, 2009).

¹⁸ Comments of Clearwire Corporation (filed Oct. 13, 2009) (Clearwire Comments).

¹⁹ Comments of EIBASS (filed Oct. 13, 2009). The EIBASS comments and reply comments do not relate to the issues raised in the *BRS/EBS Third FNPRM*. Instead, they address an issue pending in IB Docket No. 02-364 - the protection of Broadcast Auxiliary Service (BAS) licensees operating on Channel A10 (2483.5-2500 MHz), which overlaps with EBS Channel A1 (2496-2502 MHz) and a proposal to relocate licensees operating on BAS Channels A8-A10. See Society of Broadcast Engineers Petition for Reconsideration, IB Docket No. 02-364 (filed May 22, 2006) (SBE Petition) at 2-3. We will not give further consideration to EIBASS' comments and reply comments, as well as that portion of WCA's reply comments addressing the EIBASS comments, in this *Third Report and Order*. Instead, we will consider their comments in connection with the SBE Petition.

²⁰ Comments of Gateway Telecom LLC dba StratusWave Communications (filed Oct. 13, 2009) (StratusWave Comments).

²¹ Comments of James McCotter (filed Oct. 13, 2009) (McCotter Comments)

²² Comments of N-1 Communications, LLC (filed Oct. 13, 2009) (N-1 Comments).

²³ Comments, Wireless Communications Association International, Inc. (filed Oct. 13, 2009) (WCA Comments).

²⁴ Reply Comments of EIBASS (filed Oct. 23, 2009).

²⁵ Reply Comments, Wireless Communications Association International, Inc. (filed Oct. 23, 2009) (WCA Reply).

²⁶ Although Clearwire had originally opposed any extension of the May 1, 2011 deadline for demonstrating substantial service (Clearwire Auction Reply), it offered no opinion on that issue in response to the *BRS/EBS Third FNPRM*. See Clearwire Comments.

²⁷ WCA Comments at 2.

spectrum laying fallow.²⁸ WCA cites the following factors as supporting a four year deadline: (1) the transition to the new BRS/EBS band plan is almost complete; (2) 2.5 GHz technology is proven, and (3) equipment is available from multiple vendors at prices that support commercial deployment.²⁹ N-1 and StratusWave agree that “four years should be a sufficient period of time for BRS auction winners to meet their substantial service obligations.”³⁰

8. McCotter asks the Commission to allow six years for to demonstrate substantial service for new initial BRS licenses.³¹ He contends there is no reason to treat BRS differently from services such as Local Multipoint Distribution Service (LMDS), Advanced Wireless Services (AWS) and the Wireless Communications Service in the 2303-2320 MHz and 2345-2360 MHz bands (WCS), where licensees received ten years or more to make a substantial service showing.³² He believes that market forces will impel licensees to commence service as soon as possible in order to obtain a return on their auction investments.³³ He believes this is particularly true in the current environment, where spectrum for wireless broadband is likely to be scarce.³⁴ McCotter believes additional time may be necessary because the BRS spectrum is highly encumbered in some markets.³⁵ McCotter also argues that the broadband industry is in a highly transitional state because the national broadband plan has not yet been issued and 4G technologies are being developed.³⁶ He believes there may be “valid technical reasons to hesitate before committing to a particular platform, equipment vendor, or technological path.”³⁷ He argues that six years should be enough time “for 4G equipment issues to be resolved, equipment to be readily and widely available at reasonable prices, and for the broadband plan to reach the implementation stage . . .”³⁸

9. In response to McCotter, WCA contends that McCotter has not shown that licensees need more than four years to deploy service.³⁹ WCA argues that the purpose of the national broadband plan is to expedite broadband deployment, not delay it.⁴⁰ It believes that “[w]inners of Auction 86 will have ample time to adjust in the unlikely event the national broadband plan adversely impacts their deployment

²⁸ *Id.*

²⁹ *Id.* at 3.

³⁰ StratusWave Comments at 2; *see also* N-1 Comments at 2. StratusWave “would have preferred a longer compliance period,” but supports the four year proposal. StratusWave Comments at 2.

³¹ McCotter Comments at 3.

³² *Id.* at 1.

³³ *Id.* at 2.

³⁴ *Id.*, *citing* Comment Sought on Spectrum for Broadband, NBP Public Notice #6, GN Docket Nos. 09-47, 09-51, 09-137, *Public Notice*, DA 09-2100 (rel. Sep. 23, 2009).

³⁵ McCotter Comments at 2.

³⁶ *Id.* at 3.

³⁷ *Id.*

³⁸ *Id.*

³⁹ WCA Reply at 2.

⁴⁰ *Id.*, *citing* A National Broadband Plan for Our Future, GN Docket No. 09-51, *Notice of Inquiry*, 24 FCC Red 4342, 4343-45 (2009).

plans.”⁴¹ According to WCA, the “steady progress” existing licensees are making in deploying service contradict McCotter’s concern that affordable 4G equipment is not available.⁴²

10. N-1 and StratusWave urge the Commission to act quickly and change the rule before Auction 86 ends.⁴³ StratusWave notes that the Commission proposed to apply the change to licenses issued after the new rule becomes effective and argues that the purpose of the proceeding will be defeated if licenses are issued before the new rules become effective.⁴⁴

C. Comments re Revisions to Introductory Text of Section 27.14(o)

11. Clearwire and WCA support our specific proposed language to revise the introductory text of Section 27.14(o) of the Commission’s Rules to state more clearly the Commission’s intent to allow BRS or EBS licensees to demonstrate substantial service if their respective lessees met one of the safe harbors adopted by the Commission and to allow licenses to be combined for purposes of demonstrating substantial service under certain circumstances.⁴⁵ Clearwire and WCA argue that the revisions will minimize the potential for licensee confusion.⁴⁶

III. DISCUSSION

A. Extension of Substantial Service Deadline for New Initial BRS Licenses

12. We adopt our proposal to require a demonstration of substantial service within four years for new initial BRS licenses. As noted in the *BRS/EBS Third FNPRM*, we believe that the substantial service deadline should ensure that spectrum is promptly placed in use while allowing licensees a reasonable opportunity to construct.⁴⁷ We agree with most commenters that, with respect to new initial BRS licenses, a four year term strikes the appropriate balance in serving these goals. We recognize that the May 1, 2011 deadline adopted in 2006 does not provide adequate time to build out new initial BRS licenses, particularly since licenses for the recently-completed Auction 86 have not yet been issued. However, the fact that existing licensees are rapidly deploying service in this band demonstrates that new licensees also should be able to deploy rapidly.⁴⁸ WCA’s representations concerning the availability of equipment and the nearly complete status of the transition to the new band plan provide further assurance that new licensees can deploy service in a relatively expedited manner. Moreover, given the high demand for wireless broadband services spectrum noted by the parties, we believe it is appropriate to set a

⁴¹ WCA Reply at 3.

⁴² *Id.* at 3-4.

⁴³ N-1 Comments at 2; StratusWave Comments at 2.

⁴⁴ Clearwire Comments at 2-3; StratusWave Comments at 2.

⁴⁵ WCA Comments at 3, Clearwire Comments at 2-3.

⁴⁶ *Id.*

⁴⁷ *BRS/EBS Third FNPRM*, 24 FCC Rcd at 12269 ¶ 26.

⁴⁸ For example, by the end of 2010, Clearwire expects to be offering WiMAX service in 80 markets covering 120 million people. Clearwire Comments at 1-2. DigitalBridge Communications also offers WiMAX service in fourteen towns in Idaho, Indiana, Montana, South Dakota, and Virginia. See <http://www.digitalbridgecommunications.com/OurTowns/tabid/69/Default.aspx> (last visited Jan. 13, 2010). Northern Michigan University has developed and launched a WiMAX network designed exclusively to serve its educational community. See Request for Special Temporary Authority, Northern Michigan University, File No. 0003955302 (filed Sep. 1, 2009).

relatively aggressive buildout schedule to ensure that licensees promptly place the spectrum in use and provide advanced broadband services.

13. In light of these considerations, we reject McCotter's arguments that six years is a more appropriate time frame for demonstrating substantial service. McCotter has not shown that an additional two years is necessary, and we believe that allowing six years would unduly delay placing this spectrum in use. Most significantly, McCotter's argument that additional time is needed because the wireless broadband industry is in a "transitional state" is contradicted by the rapidly increasing number of deployments in the band. We also disagree with McCotter that BRS is similarly situated to LMDS, WCS, and AWS. Those services faced equipment, technical, or federal relocation issues that made buildout more difficult and that BRS does not face.⁴⁹ While McCotter is correct that some of the new licenses will be highly encumbered, bidders for those licenses were warned about the existence of incumbent licenses and were directed to be familiar with the status of incumbent operations.⁵⁰ Furthermore, the Commission has established a separate substantial service safe harbors for heavily encumbered licenses.⁵¹ Moreover, as explained in the *BRS/EBS 3rd FNPRM*, when the Commission adopted May 1, 2011 as the demonstration of substantial service deadline, it gave current BRS licensees five years to demonstrate substantial service and transition to the new band plan and technical rules.⁵² At this time, the transition of the 2.5 GHz band is nearly complete. Thus, we conclude that McCotter has not provided a sufficient reason for us to treat winners of licenses in Auction No. 86 more favorably than the Commission treated current BRS license holders when it adopted the May 1, 2011 deadline for demonstrating substantial service. McCotter's remaining arguments provide no basis for adopting a longer buildout period.

14. We note that we do revise our proposal in the *BRS/EBS Third FNPRM* in one respect. We had originally proposed to make the new substantial service date effective when the new version of Section 27.14(o) of the Commission's Rules became effective.⁵³ Because Auction 86 has now closed, we amend Section 27.14(o) to apply the new substantial service date to initial licenses granted on or after the date the *Closing Public Notice* was released November 6, 2009.⁵⁴ This change will allow all licensees awarded licenses in Auction 86 to take advantage of the new substantial service date and addresses the concerns raised by N-1 and StratusWave.⁵⁵

⁴⁹ See Applications filed by Licensees in the Local Multipoint Distribution Service (LMDS) Seeking Waivers of Section 101.1011 of the Commission's Rules and Extensions of Time to Construct and Demonstrate Substantial Service, *Memorandum Opinion and Order*, 23 FCC Rcd 5894 (WTB 2008); Consolidated Request of the WCS Coalition for Limited Waiver of Construction Deadline for 132 WCS Licenses, *Order*, 21 FCC Rcd 14134 (WTB 2006); Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands, WT Docket No. 02-353, *Report and Order*, 18 FCC Rcd 25162, 25192 ¶ 76 (2003).

⁵⁰ Auction of Broadband Radio Service (BRS) Licenses Scheduled for October 27, 2009 Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 86, *Public Notice*, AU Docket No. 09-56, 24 FCC Rcd 8277, 8290 ¶ 41 (WTB 2009).

⁵¹ See 47 C.F.R. § 27.14(o)(4), (5).

⁵² *BRS/EBS Third NPRM*, 24 FCC Rcd at 12269 ¶ 26.

⁵³ *Id.*

⁵⁴ See *Closing Public Notice*.

⁵⁵ See *supra* ¶ 11.

B. Revisions to Introductory Text of Section 27.14(o)

15. We will make the changes to Section 27.14(o) as proposed in the *BRS/EBS Third NPRM*. In particular, the revised rule will more clearly state the Commission's intent to allow BRS or Educational Broadband Service (EBS) licensees to demonstrate substantial service if a lessee has met one of the specified safe harbors, and to allow licenses to be combined for purposes of demonstrating substantial service under certain circumstances. We agree with Clearwire and WCA that the changes will help clarify the rule and assist licensees as they file substantial service showings with the Commission. No commenter opposed the proposed changes.

C. Correction of Clerical Error

16. On our own motion, we correct a clerical error in Section 27.5(i)(1) of the Commission's Rules.⁵⁶ The listing for BRS Channel 1 in the pre-transition frequency assignments currently reads as "RS Channel 1."⁵⁷

IV. PROCEDURAL MATTERS**A. Final Regulatory Flexibility Act Certification**

17. For the reasons described below, we now certify that the policies and rules adopted in the *BRS/EBS Third Report and Order* will not have a significant economic impact on a substantial number of small entities. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."⁵⁸ In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.⁵⁹ A "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the U.S. Small Business Administration (SBA).⁶⁰

18. In the *BRS/EBS Third Report and Order*, the Commission extends the deadline for demonstrating substantial service for those licensees that are granted an initial BRS license on or after November 6, 2009. The Commission takes this action in the context of its decision to auction 78 available BRS BTA licenses in Auction No. 86, which began on October 27, 2009. The Wireless Telecommunications Bureau announced the close of Auction No. 86 on November 6, 2009.⁶¹ This action will not create any additional burdens for BRS licensees because all BRS licensees must demonstrate substantial service. Moreover, this decision relieves licensees granted an initial license on or after November 6, 2009 from having to meet the May 1, 2011 deadline, but would require them to demonstrate substantial service four years from the date of license grant.

⁵⁶ 47 C.F.R. § 27.5(i)(1).

⁵⁷ *Id.*

⁵⁸ 5 U.S.C. § 601(6).

⁵⁹ 5 U.S.C. § 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

⁶⁰ 15 U.S.C. § 632.

⁶¹ *Closing Public Notice*.

19. Therefore, we certify that the requirements of the *BRS/EBS Third Report and Order* will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of this *BRS/EBS Third Report and Order*, including a copy of this Final Regulatory Flexibility Certification, in a report to Congress and the Government Accountability Office pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, *see* 5 U.S.C. § 801(a)(1)(A).

B. Paperwork Reduction Analysis

20. This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any proposed information collection burden “for small business concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4).

C. Further Information

21. For further information contact Nancy M. Zaczek of the Wireless Telecommunications Bureau, Broadband Division, at 202-418-0274 or by e-mail to Nancy.Zaczek@fcc.gov.

V. ORDERING CLAUSES

22. Accordingly, IT IS ORDERED, pursuant to Sections 1, 2, 4(i), 7, 10, 201, 214, 301, 302, 303, 307, 308, 309, 310, 319, 324, 332, 333 and 706 of the Communications Act of 1934, 47 U.S.C. §§ 151, 152, 154(i), 157, 160, 201, 214, 301, 302, 303, 307, 308, 309, 310, 319, 324, 332, 333, and 706, that this *Third Report and Order* is hereby ADOPTED.

23. IT IS FURTHER ORDERED pursuant to Section 4(i) of the Communications Act of 1934, 47 U.S.C. § 154(i), that the Commission’s Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Third Report and Order*, including the Final Regulatory Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Final Rules

I. PART 27 – MISCELLANEOUS WIRELESS COMMUNICATIONS SERVICES

1. The authority citation for Part 27 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 301, 302, 303, 307, 309, 332, 336, and 337 unless otherwise noted.

2. Amend §27.5 by revising paragraph (i)(1) to read as follows:

§ 27.5 Frequencies.

(i) ***

- (1) Pre-transition frequency assignments.

BRS Channel 1: 2150–2156 MHz or 2496–2500 MHz

BRS Channel 2: 2156–2162 MHz or 2686–2690 MHz

BRS Channel 2A: 2156–2160 MHz

EBS Channel A1: 2500–2506 MHz

EBS Channel B1: 2506–2512 MHz

EBS Channel A2: 2512–2518 MHz

EBS Channel B2: 2518–2524 MHz

EBS Channel A3: 2524–2530 MHz

EBS Channel B3: 2530–2536 MHz

EBS Channel A4: 2536–2542 MHz

EBS Channel B4: 2542–2548 MHz

EBS Channel C1: 2548–2554 MHz

EBS Channel D1: 2554–2560 MHz

EBS Channel C2: 2560–2566 MHz

EBS Channel D2: 2566–2572 MHz

EBS Channel C3: 2572–2578 MHz

EBS Channel D3: 2578–2584 MHz

EBS Channel C4: 2584–2590 MHz

EBS Channel D4: 2590–2596 MHz

BRS Channel E1: 2596–2602 MHz

BRS Channel F1: 2602–2608 MHz

BRS Channel E2: 2608–2614 MHz

BRS Channel F2: 2614–2620 MHz

BRS Channel E3: 2620–2626 MHz

BRS Channel F3: 2626–2632 MHz

BRS Channel E4: 2632–2638 MHz

BRS Channel F4: 2638–2644 MHz

EBS Channel G1: 2644–2650 MHz

BRS Channel H1: 2650–2656 MHz

EBS Channel G2: 2656–2662 MHz

BRS Channel H2: 2662–2668 MHz
EBS Channel G3: 2668–2674 MHz
BRS Channel H3: 2674–2680 MHz
EBS Channel G4: 2680–2686 MHz
I Channels: 2686–2690 MHz

3. Amend § 27.14 by revising paragraph (o) introductory text to read as follows:

§ 27.14 Construction requirements; Criteria for renewal.

(o) BRS and EBS licensees originally issued a BRS or EBS license prior to November 6, 2009 must make a showing of substantial service no later than May 1, 2011. With respect to initial BRS licenses issued on or after November 6, 2009, the licensee must make a showing of substantial service within four years from the date of issue of the license. Incumbent BRS licensees that are required to demonstrate substantial service by May 1, 2011 must file their substantial service showings with their renewal applications. “Substantial service” is defined as service which is sound, favorable, and substantially above a level of mediocre service which just might minimally warrant renewal. Substantial service for BRS and EBS licensees is satisfied if a licensee meets the requirements of paragraph (o)(1), (o)(2), or (o)(3) of this section. If a licensee has not met the requirements of paragraph (o)(1), (o)(2), or (o)(3) of this section, then demonstration of substantial service shall proceed on a case-by-case basis. Except as provided in paragraphs (o)(4) and (o)(5) of this section, all substantial service determinations will be made on a license-by-license basis. Failure by any licensee to demonstrate substantial service will result in forfeiture of the license and the licensee will be ineligible to regain it.

APPENDIX B**List of Commenters to *BRS/EBS 3rd FNPRM*****Commenters**

Clearwire Corporation

The Engineers for the Integrity of Broadcast Auxiliary Services Spectrum

Gateway Telecom LLC dba StratusWave Communications

James McCotter

N-1 Communications, LLC

Wireless Communications Association International, Inc.

Reply Comments

The Engineers for the Integrity of Broadcast Auxiliary Services Spectrum

Wireless Communications Association International, Inc.