

Clarendon Foundation

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May 9, 2008

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: *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 – WT Docket No. 03-66*

EX PARTE LETTER

Dear Ms. Dortch:

I am writing on behalf of Clarendon Foundation (“Clarendon”) to address an important issue raised in the May 6, 2008 Wireless Communications Association International, Inc. (“WCA”) *Ex Parte* Filing regarding the maximum lease term of pre-January 10, 2005 EBS Leases. In the *Third Order On Reconsideration And Sixth Memorandum Opinion And Order And Fourth Memorandum Opinion And Order And Second Further Notice Of Proposed Rulemaking And Declaratory Ruling* in the above-referenced proceeding (“*2008 BRS/EBS Order*”), in responding to a request made in part by Clarendon at paragraphs 136 and 137, Clarendon believes that the Commission made two inaccurate statements.

In paragraph 136, the Commission indicated that it had previously “stated” that pre-2005 ITFS (EBS) leases had a term that began *on the date of execution*, and again at paragraph 137 in indicating that the Commission’s prior “rules and policies” limited ITFS (EBS) lease terms to 15 years “*from the date they were executed by the parties.*”

Looking at the particular issues the Commission was attempting to address in these two paragraphs, at first reading, it appears the Commission was limiting its discussion to only two specific types of EBS leases: (1) those that could be interpreted to last indefinitely; and (2) one-way only video leases entered into prior to the release of the *Two-Way Order*. Reading those paragraphs more broadly, however, they can be interpreted to apply to all pre-2005 ITFS (EBS) leases.

Clarendon is not aware that the Commission ever specified in a rule that the term of a pre-2005 ITFS (EBS) lease started to run when “executed” and its policies in approving legacy ITFS (EBS) leases that specifically stated those leases started at some future time

other than the date the parties executed suggests that there wasn't such a policy in place either. More importantly, interpreting *all* pre-2005 ITFS (EBS) leases in this fashion now would be detrimental to the 2.5 GHz industry.

As one of the larger EBS Licensees, Clarendon clearly has an interest in this issue. Clarendon currently holds 21 EBS licenses. Some of those licenses are subject to *De Facto* Transfer Leases entered into after January 10, 2005, but it also has a number of leases that were entered into prior to January 10, 2005.

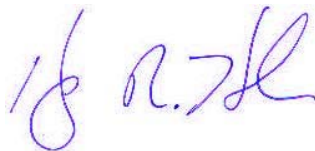
Clarendon is concerned that broadly interpreting all pre-2005 ITFS (EBS) lease terms in the way suggested by the Commission in paragraphs 136-137 would have a substantial impact on Clarendon and other EBS licensees who understand their pre-January 2005 leases to have started on a date later than the date of "execution."

Specifically, all of the leases that Clarendon Foundation entered into with wireless operators prior to grant of an ITFS (EBS) license provided that the start date for the lease began when the FCC granted the application. This was a long-standing standard industry practice that recognized the fact that the operator typically paid the engineering and legal costs of filing for the application in the first place. The length of the lease is a critical factor in the viability of the wireless business operation, without which there may not be adequate incentive to fund the educational component of the service.

This practice is one that was encouraged by the pertinent regulations for leasing ITFS spectrum at the time. Moreover, the resulting lease is an arrangement that private parties entered into willingly for their mutual best interests to construct and operate facilities in compliance with regulatory standards and requirements. A retroactive reversal of the formerly accepted practice is not warranted, since the resulting leases were filed with the Commission and reviewed by Commission staff without objection at the time.

Thus, Clarendon supports WCA's May 6, 2008 filing in attempting to propose a way that the Commission can address the specific type of pre-2005 ITFS (EBS) leases—those with seemingly indefinite terms and those for one-way video only service—and not adversely affect other leases for which there is no need to disrupt. Clarendon urges the Commission to clarify and narrow the reading of paragraphs 136 and 137 as soon as possible before it has a more disruptive effect on the industry.

Sincerely yours,



Kemp R. Harshman
President