

FY 2010 PROCESSING AND FILING FEE TABLE—Continued

Document/action	FY 2010 fee
Protest	60

* To record a mining claim or site location, you must pay this processing fee along with the initial maintenance fee and the one-time location fee required by statute. 43 CFR part 3833

PART 3200—GEOTHERMAL RESOURCE LEASING

■ 3. The authority citation for part 3200 continues to read as follows:

Authority: 30 U.S.C. 1001–1028; 43 U.S.C. 1701 *et seq.*; and Pub. L. 109–58.

Subpart 3216—Transfers

■ 4. Amend § 3216.14 by revising the third sentence of the first paragraph to read as follows:

§ 3216.14 What filing fees and forms does a transfer require?

* * * For example, if you are transferring record title for three leases, submit three times the fee for “Assignment and transfer of record title or operating rights” in the fee schedule in § 3000.12 of this chapter. * * *

[FR Doc. E9–23268 Filed 9–25–09; 8:45 am]

BILLING CODE 4310–84–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 27

[WT Docket No. 03–66; FCC 09–70]

Facilitating the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150–2162 and 2500–2690 MHz Bands

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission addresses two issues with respect to two petitions for reconsideration filed in response to the *Fourth Memorandum Opinion and Order*. First, the Commission changes its policy regarding the “start date” of Educational Broadband Service (EBS) excess capacity lease agreements. Second, the Commission amends its rules to permit BRS 1 and 2/2A licensees to simultaneously operate, post-transition, in the 2.1 GHz band and in the 2.5 GHz band. The Commission makes these changes to facilitate the provision of the broadband and other new and innovative wireless services in the 2.5 GHz band, to ensure that the

spectrum is put in use, and to promote rapid service to the public.

DATES: Effective October 28, 2009.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Nancy M. Zaczek, Wireless Telecommunications Bureau, Broadband Division, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554, at (202) 418–0274 or via the Internet to Nancy.Zaczek@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission’s *Fifth Memorandum Opinion and Order*, FCC 09–70, adopted on September 8, 2009 and released on September 11, 2009. The full text of this document, including attachments and related documents is available for public inspection and copying during normal business hours in the FCC Reference Information Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. The complete text of these documents and related Commission documents may be purchased from the Commission’s duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (202) 488–5300 or (800) 378–3160, contact BCPI at its Web site: <http://www.bcpiweb.com>. When ordering documents from BCPI, please provide the appropriate FCC document number, for example, FCC 09–70. The complete text of these documents is also available on the Commission’s Web site at http://wireless.fcc.gov/edocs_public/attachment/FCC-09-70A1doc. This full text may also be downloaded at: <http://wireless.fcc.gov/releases.html>. Alternative formats (computer diskette, large print, audio cassette, and Braille) are available by contacting Brian Millin at (202) 418–7426, TTY (202) 418–7365, or via e-mail to bmillin@fcc.gov.

Summary

I. Introduction

1. In this *Fifth Memorandum Opinion and Order*, the Commission grants, in part, two petitions for reconsideration of the Broadband Radio Service (BRS)/ Educational Broadband Service (EBS) *Fourth Memorandum Opinion and*

Order adopted on March 18, 2008 and released on March 20, 2008, 73 FR 26032 (May 8, 2008).

2. The first issue we address on reconsideration concerns how the Commission should implement the 15-year term limit for grandfathered EBS leases (*i.e.* leases entered into before January 10, 2005) that it established in the *BRS/EBS Fourth MO&O*. The item adopts an unopposed compromise proposal negotiated between the National EBS Association (NEBSA)—which represents educational interests that hold EBS licenses—and the Wireless Communications Association International, Inc. (WCA)—which represents commercial operators that lease spectrum from EBS licensees. Our adoption of the NEBSA/WCA Proposal balances the concerns of both educators and commercial lessees.

3. The second issue we address on reconsideration concerns whether the Commission should permit BRS 1 and 2/2A licensees to simultaneously operate, *post-transition*, in the 2.1 GHz band and in the 2.5 GHz band until all of their customers have migrated to the 2.5 GHz band. This determination is consistent with the Commission’s decision in the *BRS/EBS Fourth Memorandum Opinion and Order* to permit such simultaneous operation *pre-transition* in order to avoid requiring BRS operators to flash cut subscribers to the new band plan.

II. Issues on Reconsideration

A. Grandfathered EBS Leases

4. **Background.** The Commission established the Instructional Television Fixed Service (ITFS) in the 2500–2690 MHz band in 1963 and later adopted rules for the Multipoint Distribution Service (MDS). ITFS was generally used for one-way video service for students. MDS was generally used to provide wireless cable service to subscribers. In 1983, noting that the ITFS was being underutilized, the Commission permitted ITFS licensees to lease excess channel capacity to commercial MDS operators. In 2004, the Commission renamed ITFS as the Educational Broadband Service (EBS) and MDS as the Broadband Radio Service (BRS).

5. The Commission’s policy regarding the length of EBS leases has evolved

since it first permitted ITFS (now EBS) licensees to lease excess capacity in 1983. Originally, the Commission's policy prohibited an ITFS licensee from executing a lease agreement with commercial operators that extended beyond the 10-year ITFS license term because such provisions were viewed as inconsistent with the terms of the license. In 1995, however, the Commission changed its policy to permit an ITFS licensee to enter into a 10-year lease agreement without regard to the duration of the licensee's license term, but required the lease to note that such an extension was contingent on the renewal of the license. In 1998, in the *Two-Way Order*, the Commission again changed its policy and permitted an ITFS licensee, as of the effective date of that order, which was January 25, 1999, to enter into a 15-year lease agreement, but continued to require that, to the extent the lease extended beyond the current license term, the lease specify that such an extension be subject to the renewal of the underlying license. The Commission also grandfathered existing ITFS excess capacity leases entered into before March 31, 1997. In 2000, in the *Two-Way Order on Further Reconsideration*, the Commission further grandfathered ITFS excess capacity leases entered into before March 31, 1997 that contained an automatic renewal clause that would be effective after March 31, 1997, provided that the total term of the lease did not exceed 15 years.

6. In 2004, in the *BRS/EBS R&O*, the Commission adopted a number of revisions to ITFS and MDS, and renamed ITFS as the Educational Broadband Service (EBS) and MDS as the Broadband Radio Service (BRS). Of particular relevance here, the Commission applied the spectrum leasing rules established in the Secondary Markets proceeding to EBS (formerly ITFS) excess capacity leases for new leases entered into after the effective date of that order (which was January 10, 2005), while grandfathering existing leases under the previous ITFS rules, which limited such leases to a term of no more than fifteen years. In 2006, in the *BRS/EBS Third MO&O*, the Commission modified the application of the spectrum leasing rules and policies of the Secondary Markets proceeding to EBS leases, while reaffirming that excess capacity leases entered into before January 10, 2005 were grandfathered under the previous ITFS leasing framework.

7. In the *BRS/EBS Fourth MO&O* adopted in March 2008, the Commission provided additional clarification regarding grandfathered leases, holding

that they "are grandfathered after January 10, 2005 if they have an automatic renewal clause effective after January 10, 2005, only to the extent that such leases do not exceed 15 years in total length (including the automatic renewal period(s))." The Commission stated that leases executed before January 10, 2005 are limited to a term of 15 years "from the date of execution."

8. On June 9, 2008, WCA and Gateway Access Solutions, Inc. asked the Commission to reconsider its decision in the *BRS/EBS Fourth MO&O* that limited grandfathered excess capacity leases entered into before January 10, 2005 to a term of 15 years, starting from the date of execution. C&W Enterprises, Clarendon Foundation, and a Commercial Coalition comprised of Sprint Nextel Corp., Clearwire Corp., Xanadoo, Inc., NextWave, and WCA support WCA's petition. NEBSA, the ITFS/2.5 GHz Mobile Wireless Engineering & Development Alliance, the Hispanic Information and Telecommunications Network, Inc., and Texas State Technical College—Sweetwater opposed the petitions for reconsideration. Notwithstanding the disagreements between educational licensees and commercial lessees on this issue, both sides expressed a willingness to work out a compromise on this issue. On October 16, 2008, NEBSA and WCA submitted a joint proposal that reflects a compromise agreement between them regarding the maximum permissible lease term for grandfathered leases, which they assert is "fair and reasonable" in addressing their different concerns.

9. We conclude that the public interest would best be served by adopting the NEBSA/WCA Proposal. The NEBSA/WCA Proposal ensures the stability of existing viable relationships between educators and commercial lessees. We therefore adopt the compromise proposal as follows. Every grandfathered lease entered into before January 10, 2005, is limited to a term of 15 years commencing from its start date, which remains the date of execution except under certain circumstances. For earlier leases, *i.e.*, grandfathered excess capacity leases executed before January 25, 1999, the start date is the date on which it was executed unless the existing lease provided for a later start date, and: (1) the lease actually started before March 20, 2008—as demonstrated by documentary evidence (including that the EBS licensee/lessor has been paid on or after the commencement of the lease)—in which case the lease will be deemed to have started on the start date contained in the

lease; or (2) the lease did not start before March 20, 2008, but the parties have agreed in writing to continue with the existing lease, in which case the start date is deemed to be March 20, 2008. For later leases, *i.e.*, grandfathered leases executed on or after January 25, 1999, but before January 10, 2005, the start date is the date on which the lease was executed unless the existing lease provided for a later start date.

10. We find that the NEBSA/WCA Proposal addresses the concerns of the other parties that have taken positions on the term of grandfathered leases. We find that the NEBSA/WCA Proposal appropriately balances the needs of the commercial lessee—to have a significant length of time in which to build out its service—with the needs of the educational licensee/lessor not to be tied indefinitely to lease agreements that have not provided it with educational services or lease revenues. We have granted relief with respect to one-way analog video leases entered into prior to the *Two-Way Order*. Further, with respect to leases involving broadband services, the rule changes we have made in this proceeding have been designed to facilitate the provision of broadband services. We decline to adopt the alternative proposals offered by the parties to this proceeding.

B. Simultaneous Operation on Old and New BRS Channels 1 and 2/2A

11. *Background.* In the *BRS/EBS R&O*, the Commission not only restructured the 2500–2690 MHz band, but also designated the 2495–2500 MHz band for use in connection with the 2500–2690 MHz band. In the *BRS/EBS R&O*, the Commission proceeded to relocate BRS Channels 1 and 2/2A to new channel locations in the 2495–2690 MHz band. Specifically, BRS Channel 1 would be relocated from 2150–2156 MHz (which was redesignated for Advanced Wireless Service (AWS)) to 2496–2502 MHz and Channel 2/2A would be relocated from 2156–2160/62 MHz (also redesignated for AWS) to 2618–2624 MHz. In the *BRS/EBS Third MO&O*, the Commission discussed the relationship between the transition within the 2.5 GHz band and the relocation of the BRS Channels No. 1 and No. 2/2A incumbents currently operating at 2150–2156 MHz and 2156–2160/62 MHz. In that regard, the Commission held that licensees on these channels may operate in either 2150–2156 or 2496–2500 MHz (for BRS Channel 1) or 2156–2160/62 or 2686–2690 MHz band (for BRS Channel 2/2A) pre-transition, but not in both bands. In the *BRS/EBS Fourth MO&O*, the Commission, in response to a petition for reconsideration filed by WCA, found

that BRS Channels 1 and 2/2A licensees may operate simultaneously in their old locations at 2150–2156 MHz and 2156–2160/62 MHz and their temporary, pre-transition locations at 2496–2500 MHz (BRS Channel 1) and 2686–2690 MHz (BRS Channel 2) until every subscriber is relocated to the 2.5 GHz band, at which point the licensees must cease all operations in the 2150–2160/62 MHz band.

12. In the WCA Petition, WCA asks the Commission to confirm that even after a Basic Trading Area has been transitioned, BRS Channels 1 and 2/2A licensees may simultaneously operate in both the 2.1 GHz band and the 2.5 GHz band until all of their subscribers have been successfully migrated to the 2.5 GHz band.

13. We agree with WCA that it is not in the public interest to permit simultaneous operations, pre-transition, but prohibit them post-transition prior to the migration of subscribers. Thus, we conclude that BRS Channels 1 and 2/2A operators may simultaneously operate, post-transition, in their old channel locations at 2150–2156 MHz and 2156–2160/62 MHz and their new channel locations at 2496–2502 MHz or 2618–2624 MHz until such time as all of their subscribers have been migrated to the 2.5 GHz band. Advanced Wireless Service (AWS) licensees must relocate existing BRS operations at 2150–2156 MHz and 2156–2160/62 MHz if necessary in order to commence AWS operations in the band under circumstances specified in the Commission’s rules. Since the BRS rules do not explicitly allow simultaneous operation, post-transition, on both the old and new channel locations, we amend §§ 27.5(i)(2)(i) and (iii) of the Commission’s rules to add such authorization.

III. Procedural Matters

14. *Paperwork Reduction Analysis.* 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).

IV. Final Regulatory Flexibility Act Certification of BRS/EBS Fifth MO&O

15. For the reasons described below, we now certify that the policies and rules adopted in the *BRS/EBS Fifth MO&O* 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.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. 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).

16. In this *BRS/EBS Fifth MO&O*, the Commission permits BRS Channels 1 and 2/2A licensees to simultaneously operate in their old channel locations at 2150–2160/62 MHz and their new channel locations at 2496–2502 MHz or 2618–2624 MHz, post-transition, until all of their subscribers have been migrated to the 2.5 GHz band. In the *BRS/EBS Fourth MO&O*, the Commission permitted BRS Channels 1 and 2/2A operators to simultaneously operate in their old channel locations and their temporary channel locations at 2496–2500 MHz or 2686–2690 MHz, pre-transition.

17. We find that our actions will not affect a substantial number of small entities because it affects only BRS Channels 1 and 2/2A operators that are actually operating and that will migrate subscribers post-transition to the 2.5 GHz band. Furthermore, our actions provide such entities with additional flexibility to operate simultaneously in their old and new channel positions while transitioning their systems to the new band plan. Therefore, we certify that the requirements of the *BRS/EBS Fifth MO&O* will not have a significant economic impact on a substantial number of small entities.

V. Report to Congress

18. The Commission will send a copy of this *Fifth Memorandum Opinion and Order*, including a copy of this Final Regulatory Flexibility Certification, in a report to be sent 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).

VI. Ordering Clauses

19. Accordingly, it is ordered, that pursuant to section 4(i) and 405 of the Communications Act of 1934, 47 U.S.C. 154(i), 405, and § 1.429 of the Commission’s rules, 47 CFR 1.429, the Petitions for Reconsideration filed by the Wireless Communications Association International, Inc. and

Gateway Access Solutions, Inc. on June 9, 2008, are granted in part and are otherwise denied.

20. It is further ordered, pursuant to section 4(i) of the Communications Act of 1934, 47 U.S.C. 154(i), and § 1.44(e) of the Commission’s rules, 47 CFR 1.44(e), that the Petition for Stay of Wireless Communications Association International, Inc. filed on June 9, 2008, is dismissed as moot.

21. 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 *Fifth Memorandum Opinion and Order*, including the Final Regulatory Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 27

Communications common carriers, Communications equipment, Equal employment opportunity, Radio, Reporting and recordkeeping requirements, Satellites, Securities, Telecommunications.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

Final Rules

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 27 as follows:

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 paragraphs (i)(2)(i) and (i)(2)(iii) to read as follows:

§ 27.5 Frequencies.

* * * * *

- (i) * * *
- (2) * * *

(i) Lower Band Segment (LBS): The following channels shall constitute the Lower Band Segment:

- BRS Channel 1: 2496–2502 MHz or 2150–2156 MHz
- EBS Channel A1: 2502–2507.5 MHz
- EBS Channel A2: 2507.5–2513 MHz
- EBS Channel A3: 2513–2518.5 MHz
- EBS Channel B1: 2518.5–2524 MHz
- EBS Channel B2: 2524–2529.5 MHz
- EBS Channel B3: 2529.5–2535 MHz

EBS Channel C1: 2535–2540.5 MHz
 EBS Channel C2: 2540.5–2546 MHz
 EBS Channel C3: 2546–2551.5 MHz
 EBS Channel D1: 2551.5–2557 MHz
 EBS Channel D2: 2557–2562.5 MHz
 EBS Channel D3: 2562.5–2568 MHz
 EBS Channel JA1: 2568.00000–
 2568.33333 MHz
 EBS Channel JA2: 2568.33333–
 2568.66666 MHz
 EBS Channel JA3: 2568.66666–
 2569.00000 MHz
 EBS Channel JB1: 2569.00000–
 2569.33333 MHz
 EBS Channel JB2: 2569.33333–
 2569.66666 MHz
 EBS Channel JB3: 2569.66666–
 2570.00000 MHz
 EBS Channel JC1: 2570.00000–
 2570.33333 MHz
 EBS Channel JC2: 2570.33333–
 2570.66666 MHz
 EBS Channel JC3: 2570.66666–
 2571.00000 MHz
 EBS Channel JD1: 2571.00000–
 2571.33333 MHz
 EBS Channel JD2: 2571.33333–
 2571.66666 MHz
 EBS Channel JD3: 2571.66666–
 2572.00000 MHz
 * * * * *

(iii) Upper Band Segment (UBS): The following channels shall constitute the Upper Band Segment:

BRS Channel KH1: 2614.00000–
 2614.33333 MHz.
 BRS Channel KH2: 2614.33333–
 2614.66666 MHz.
 BRS Channel KH3: 2614.66666–
 2615.00000 MHz.
 EBS Channel KG1: 2615.00000–
 2615.33333 MHz.
 EBS Channel KG2: 2615.33333–
 2615.66666 MHz.
 EBS Channel KG3: 2615.66666–
 2616.00000 MHz.
 BRS Channel KF1: 2616.00000–
 2616.33333 MHz.
 BRS Channel KF2: 2616.33333–
 2616.66666 MHz.
 BRS Channel KF3: 2616.66666–
 2617.00000 MHz.
 BRS Channel KE1: 2617.00000–
 2617.33333 MHz.
 BRS Channel KE2: 2617.33333–
 2617.66666 MHz.
 BRS Channel KE3: 2617.66666–
 2618.00000 MHz.
 BRS Channel 2: 2618–2624 MHz or
 2156–2162 MHz.
 BRS Channel 2A: 2618–2624 MHz or
 2156–2160 MHz.
 BRS/EBS Channel E1: 2624–2629.5
 MHz.
 BRS/EBS Channel E2: 2629.5–2635
 MHz.
 BRS/EBS Channel E3: 2635–2640.5
 MHz.

BRS/EBS Channel F1: 2640.5–2646
 MHz.
 BRS/EBS Channel F2: 2646–2651.5
 MHz.
 BRS/EBS Channel F3: 2651.5–2657
 MHz.
 BRS Channel H1: 2657–2662.5 MHz.
 BRS Channel H2: 2662.5–2668 MHz.
 BRS Channel H3: 2668–2673.5 MHz.
 EBS Channel G1: 2673.5–2679 MHz.
 EBS Channel G2: 2679–2684.5 MHz.
 EBS Channel G3: 2684.5–2690 MHz.
 * * * * *

[FR Doc. E9–23330 Filed 9–25–09; 8:45 am]
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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 599

[Docket No. NHTSA–2009–0120]

RIN 2127–AK61

Requirements and Procedures for Consumer Assistance To Recycle and Save Program

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).
ACTION: Final rule.

SUMMARY: This final rule amends the regulation implementing the Consumer Assistance to Recycle and Save (CARS) Program, published on July 29, 2009 in the *Federal Register*, under the CARS Act. The rule adds an exception process for registered dealers who were prevented from submitting an application for reimbursement for a qualifying transaction prior to the announced August 25, 2009 deadline due to problems associated with the CARS electronic transaction system.

DATES: This final rule is effective September 28, 2009. A request for an exception must be postmarked no later than October 13, 2009.

ADDRESSES: A request for exception must be made in writing and mailed by United States mail to the NHTSA Administrator, 1200 New Jersey Ave., SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For questions, you may call David Bonelli, NHTSA Office of Chief Counsel, telephone (202) 366–5834.

SUPPLEMENTARY INFORMATION:

Background

This final rule amends the regulation implementing the Consumer Assistance to Recycle and Save (CARS) Program,

published on July 29, 2009 (74 FR 37878), with a previous amendment published on August 5, 2009 (74 FR 38974), under the CARS Act (Pub. L. 111–32). The rule adds an exception process for registered dealers who were unable to submit an application for reimbursement for a qualifying transaction prior to August 25, 2009, 8 pm EDT, NHTSA’s announced deadline for the program. As detailed below, this exception process is available only where the delay is attributable to action or inaction by NHTSA.

Due to the enormous popularity of the CARS program, the available Federal funds were depleted in a short period of time. Based on daily projections of transactions, NHTSA determined that it was necessary to declare an August 24, 2009, 8 pm EDT deadline for completing CARS deals and an August 25, 2009, 8 pm EDT deadline for submitting applications for reimbursement. The agency received an overwhelming number of inquiries to the CARS hotline from dealers and consumers during the course of the program, and especially during the days immediately prior to the announced deadline. From these inquiries, we learned that dealers encountered problems in submitting applications for reimbursement as a result of problems caused by the agency’s transaction system. Because the agency was unable to respond to and resolve some of these problems prior to the application deadline, some dealers who had made qualifying CARS deals and extended credits to consumers in accordance with the provisions of the rule were prevented from completing and submitting applications for reimbursement.

We are aware that some of these difficulties arose because of a feature that automatically locks a dealer out of the CARS transaction system and prevents the dealer from being able to re-enter the system without the agency’s assistance. This occurred, for example, when a dealer inaccurately entered its account password into the system multiple times. Ordinarily, the dealer’s password could be reset through a simple telephone call to the agency for technical assistance. However, due to the volume of transactions and inquiries, some dealers may have been unsuccessful in their attempts to get their passwords reset prior to the deadline.

We are aware also that some dealers were unable to submit an electronic application because of an automatic feature that precluded a submission with a State identification number, a trade-in vehicle’s vehicle identification number (VIN), or a new vehicle’s VIN