

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of Part 2 of the Commission's Rules to	)	ET Docket No. 00-258
Allocate Spectrum Below 3 GHz for Mobile and	)	
Fixed Services to Support the Introduction of New	)	
Advanced Wireless Services, including Third	)	
Generation Wireless Systems	)	
	)	
Petition for Rulemaking of the Cellular	)	RM-9920
Telecommunications Industry Association	)	
Concerning Implementation of WRC-2000: Review	)	
of Spectrum and Regulatory Requirements for	)	
IMT-2000	)	
	)	
Amendment of the U.S. Table of Frequency	)	RM-9911
Allocations to Designate the 2500-2520/2670-	)	
2690 MHz Frequency Bands for the Mobile-	)	
Satellite Service	)	

To: The Commission

**JOINT COMMENTS OF RED EL PASO F PARTNERSHIP,**  
**RED MEMPHIS F PARTNERSHIP,**  
**RED NEW YORK E PARTNERSHIP, AND**  
**RED TUCSON E PARTNERSHIP**

Red El Paso F Partnership, Red Memphis F Partnership, Red New York E Partnership, and Red Tucson E Partnership (collectively, the "Red Partnerships") hereby submit their joint comments, through counsel, in response to the Commission's Notice of Proposed Rulemaking ("Notice") concerning the allocation of additional spectrum for new advanced wireless systems. Among other things, the Notice seeks comments concerning the possible relocation of incumbent licensees in the 2500-2690 MHz band (the "2.5 GHz band").

## **I. Introduction.**

The Red Partnerships hold licenses to operate Multipoint Distribution Service (“MDS”) stations, on various 2.5 GHz band frequencies, in four markets: MDS Station WHT776, El Paso, Texas; MDS Station WHT728, Memphis, Tennessee; MDS Station WLR500, New York, New York; and MDS Station WHT696, Tucson, Arizona. In three of these markets, the Red Partnerships provide wireless cable services under lease. In the fourth market, El Paso, the Red Partnership filed a two-way response station hub application during the Commission’s initial filing window in August 2000, in cooperation with the licensee of the E channels, which would permit the licensees to offer up to 48 MHz of broadband capacity to residential and business subscribers.<sup>1</sup> It is anticipated that high-speed, fixed wireless broadband services can be offered in these markets soon.

## **II. Relocation of Incumbent ITFS/MDS Licensees Would Be Contrary to the Public Interest.**

As MDS licensees authorized to use portions of the 2.5 GHz band, the Red Partnerships strongly oppose the relocation of any incumbent licensees in the band. A forced relocation would cause tremendous disruption to the thousands of providers and the millions of users of ITFS (“Instructional Television Fixed Service”) and MDS services.

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<sup>1</sup> See BPMDH-20000818CBG.

A. *Incumbent ITFS and MDS Operators Provide Important Community and Commercial Services That Should Not Be Disrupted.*

For thirty-five years, the 2.5 GHz band has been used nationwide for educational video services by ITFS licensees.<sup>2</sup> These licensees provide important educational opportunities for those who would otherwise be underserved. For example, ITFS licensees provide distance-learning opportunities for rural citizens and adult learning services across the United States. The importance of the services these licensees provide cannot be underestimated.

With regard to MDS operations, the impending introduction of two-way broadband services in the 2.5 GHz spectrum offers a true alternative to the current duopoly between DSL and cable modem services. Consumers who stand to benefit include residential subscribers, small and medium sized businesses, and educational institutions. Increased broadband competition will be a significant boon to these consumers and should result in lower costs, wider availability, and technological innovation.<sup>3</sup>

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<sup>2</sup> ITFS educational uses traditionally have involved one-way video transmissions with companion telephone links to permit limited two-way correspondence from students by e-mail or voice communications. Two-way broadband capabilities that are only now being realized will enhance this traditional educational function.

<sup>3</sup> The Red Partnerships have identified numerous equipment manufacturers developing Time Division Duplex (“TDD”) and Orthogonal Frequency Division Multiplexing (“OFDM”) systems specifically for MDS operations. *See, e.g.*, [www.nextnetwireless.com](http://www.nextnetwireless.com), [www.iospanwireless.com](http://www.iospanwireless.com), [www.beamreachnetworks.com](http://www.beamreachnetworks.com), [www.arraycomm.com](http://www.arraycomm.com), [www.tantivy.com](http://www.tantivy.com), [www.adaptivebroadband.com](http://www.adaptivebroadband.com).

Moreover, two-way broadband services in the 2.5 GHz spectrum further the important congressional mandate set forth in Section 706 of the Telecommunications Act of 1996.<sup>4</sup> Section 706 requires the Commission to “encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans . . . .” For purposes of the statute, “advanced telecommunications capability” is defined as “high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology.” Clearly, the incumbent licensees in the 2.5 GHz band satisfy this definition, and will soon be delivering this service to the public.<sup>5</sup>

The Commission has encouraged the development of advanced telecommunications capability in the 2.5 GHz band through proceedings such as the *Two-way Order*<sup>6</sup> and the *Digital Declaratory Ruling*.<sup>7</sup> Indeed, in its *Second Report on advanced telecommunications capability*, the Commission anticipated that two-way MDS operations “will speed the development of advanced services by permitting

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<sup>4</sup> 47 U.S.C. § 157 nt.

<sup>5</sup> First generation two-way systems using line of sight Frequency Division Duplex (“FDD”) technology have already been deployed. Second generation systems, that are not dependent on line of sight, are being tested and will be deployed later this year. These systems will operate on OFDM, TDD or FDD technologies.

<sup>6</sup> 13 FCC Rcd 19,112 (1998), *recon.*, 14 FCC Rcd 21,764 (1999), *further recon.*, FCC 00-244 (rel. July 21, 2000).

<sup>7</sup> Request for Declaratory Ruling on the Use of Digital Modulation by Multipoint Distribution Service and Instructional Television Fixed Service Stations, *Declaratory Ruling and Order*, 11 FCC Rcd 18,839 (1996).

service providers to offer a variety of fixed wireless high-speed services more rapidly.”<sup>8</sup> The Commission should continue to encourage *timely* broadband development in this band by permitting rollout to proceed smoothly.

Finally, because MDS operations are wireless, the coverage area is capable of reaching some of those who might otherwise go unserved if DSL or cable modems were the only option. Thus, MDS operations further the goal of offering advanced telecommunications service to *all Americans*. If ITFS and MDS services are relocated to a higher frequency band, with a concomitantly shorter transmission radius, many outlying schools, residents, and businesses will lose service.

*B. Mandatory Relocation Would Be Costly, Disruptive, and Complex.*

In light of the tangible benefits offered now by ITFS and MDS operators, the Commission should not consider a risky scheme to relocate these licensees to an unknown band. The disruption in service would be devastating to ITFS operators, and would severely impact the business plans of MDS operators.

Relocating incumbents from the 2.5 GHz band would be far more costly and difficult than the forced relocation in the 1990s of private operational fixed microwave service (“POFS”) licensees to make room for broadband PCS licensees.<sup>9</sup> POFS

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<sup>8</sup> Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, *Second Report*, CC Docket No. 98-146, FCC 00-290, ¶ 263 (rel. Aug. 21, 2000).

<sup>9</sup> See Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies, ET Docket No. 92-9, *First Report and Order and [continued]*

providers operated on a private, non-common carrier basis, using the spectrum for internal purposes only. Thus, POFS licensees were more capable of transitioning gradually to another band without service interruptions to third parties. In contrast, ITFS and MDS providers offer community-based and commercial services to the public. As a result, relocation of these licensees would cause major service disruptions and would force consumers to purchase new or additional equipment.

Furthermore, no comparable spectrum has even been identified. Relocation to spectrum below 3 GHz is impractical due to overcrowding. Spectrum above 3 GHz is also impractical due to its poor propagation qualities. None of the parties advocating relocation has proposed suitable spectrum for dislocated incumbent licensees, for the simple reason that there is none. Accordingly, a relocation of ITFS and MDS licensees would disserve the public interest by disrupting valuable services and relegating them to unknown spectrum.

In any case, even if the Commission were to locate sufficient spectrum to relocate the entire ITFS/MDS group of licensees, the effect would be to destroy the existing set of contractual relationships between ITFS/MDS licensees and third party lessees. Transmission and other service characteristics would be completely altered and legacy equipment would be rendered obsolete, thus voiding all existing arrangements with third parties. Such a contractual interference would be a disservice to incumbent licensees, particularly to ITFS licensees, which over the years

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*Third Notice of Proposed Rulemaking*, 7 FCC Rcd 6686 (1992).

have relied on these third party arrangements for funding to provide their educational services. For all of these reasons, the Commission should leave intact the allocations made in the 2.5 GHz band.

*C. Additional Segmentation of the 2.5 GHz Band Would Be Extremely Complex and Could Potentially Destroy the Painstaking Optimization Arrangements Between ITFS and MDS Operators.*

Finally, further band segmentation, as discussed in the Commission's Interim Report,<sup>10</sup> may have the effect of unraveling the current spectrum optimization arrangements between ITFS and MDS operators. Incumbent licensees have worked jointly to resolve a range of complex technical matters, including spectrum reconfiguration for two-way services, modulation, and general interference issues. There is no sense in undermining these optimization efforts by reconfiguring the band's segmentation plan.

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<sup>10</sup> Spectrum Study of the 2500-2690 MHz Band, *Interim Report*, at 56 (rel. Nov. 15, 2000).

For the reasons set forth above, the Red Partnerships oppose any mandatory relocation of incumbent ITFS or MDS licensees, and oppose any plan for further segmentation of the 2.5 GHz band.

Respectfully submitted,

RED PARTNERSHIPS

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## **CERTIFICATE OF SERVICE**

I, Myra Powe, an employee of Holland & Knight LLP, hereby certify that on February 22, 2001, I caused copies of the foregoing Comments to be hand-delivered to the following:

Chairman Michael K. Powell  
Commissioner Gloria Tristani  
Commissioner Susan Ness  
Commissioner Harold W. Furchtgott-Roth  
Roy J. Stewart, Chief, Mass Media Bureau  
Thomas Sugrue, Chief, Wireless Telecommunications Bureau  
Bruce Franca, Acting Chief, Office of Engineering and Technology

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