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

MAR 28 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Amendment of Part 2 of the Commission's Rules)	ET Docket No. <u>00-258</u> /
to Allocate Spectrum Below 3 GHz for Mobile)	
and Fixed Services to Support the Introduction)	
of New Advanced Wireless Services, Including)	
Third Generation Wireless Systems)	
)	
Mass Media Bureau Multipoint Distribution)	Report No. 164
Service and Instructional Television Fixed)	
Service Applications Accepted for Filing)	
)	
Mass Media Bureau Provides Further)	DA 01-751
Information Regarding Grants of ITFS and)	
MDS Two-Way Applications)	

EMERGENCY PETITION
TO DEFER ACTION ON APPLICATIONS

Pursuant to Sections 1.41 and Parts 21 and 74 of the Commission's Rules, Verizon Wireless respectfully asks the Commission to defer action on the applications currently pending before the Mass Media Bureau, in which Multipoint Distribution Service ("MDS") and Instructional Television Fixed Service ("ITFS") licensees request authority to establish two-way operations ("*Two-Way Applications*").¹ Emergency action by the Commission is necessary because, in a public notice released just two days ago,² the Mass Media Bureau declared that it will begin granting those applications as early as next week. This action clearly would be

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¹ *Mass Media Bureau Multipoint Distribution Service and Instructional Television Fixed Service Application Accepted for Filing, Public Notice, Report No. 164 (rel. Feb. 1, 2001) ("February Public Notice"); Mass Media Bureau Provides Further Information Regarding Grants of ITFS and MDS Two-Way Applications.*

² *Certain ITFS Major Modification Applications; and the Rolling One-Day Filing Window Procedure, Public Notice, DA 01-751 (rel. Mar. 26, 2001) ("March Public Notice").*

premature, given that the very spectrum addressed by those license applications is the subject of a major but uncompleted reallocation proceeding.

There are compelling reasons for the Commission to delay action until it has reached a decision in its rule making proceeding to allocate new spectrum below 3 GHz for mobile services (“3G NPRM”).³ The Commission has before it more than 2,000 applications to provide two-way service in the MDS and ITFS band. These applications, filed pursuant to the Commission’s order adopting rules that permit MDS and ITFS licensees to offer two-way service (“*Two-Way Order*”),⁴ are based on the existing 2500-2690 MHz spectrum allocation – the very allocation that the Commission may change as a result of its current deliberations in the 3G NPRM. But this week’s announcement by the Mass Media Bureau that it is ready to grant the applications at the earliest possible time after what can only have been a cursory review reveals no acknowledgement of this obvious problem. Orderly consideration and reasoned decision-making require that the horse be in front of the cart, and that the basic decisions as to spectrum allocation occur before, not after, action on applications that may be affected by those decisions.

Verizon Wireless is not suggesting that the Commission alter the *Two-Way Order*. As we have stated elsewhere, however, we believe it is possible for two-way fixed and mobile services to exist in the 2500-2690 MHz band in an appropriately segmented band plan.⁵ It is precisely this question of possibly segmenting the band to accommodate 3G services that the

³ See *Amendment of Part 2 of the Commission’s Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, Including Third Generation Wireless Systems, Notice of Proposed Rulemaking and Order*, FCC 00-455 (rel. Jan. 5, 2001) (“3G NPRM”).

⁴ See *gen. Amendments of Parts 21 and 74 to Enable Multipoint Distribution Service and Instructional Television Fixed Service Licensees to Engage in Fixed Two-Way Transmissions, Report and Order*, 13 FCC Rcd 19112 (1998) (“*Two-Way Order*”); *Report and Order on Reconsideration*, 14 FCC Rcd 12764 (1999), *Report and Order on Further Reconsideration and Further Notice of Proposed Rulemaking*, 15 FCC Rcd 14566 (2000).

⁵ See *Comments of Verizon Wireless to 3G NPRM at 24-27* (Feb. 22, 2001) (“*Verizon Wireless Comments*”); *Reply Comments of Verizon Wireless to 3G NPRM at 15-22* (Mar. 9, 2001) (“*Verizon Wireless Reply Comments*”).

Commission is considering as part of its pending 3G proceeding. Because the *Two-Way Applications* on file are premised on using channels pursuant to the existing band allocation, they are inconsistent with the segmentation plans that Commission references in the *3G NPRM*. It makes no sense to grant applications to use certain bands, only to rescind those grants later on if reallocation so requires. In light of these conflicts, the Commission should defer grant of the instant applications and any other applications for two-way service that are filed during the pendency of the 3G Proceeding.

BACKGROUND

In June 2000, the Mass Media Bureau established August 14 - 18, 2000 as the filing window for MDS and ITFS licensees to submit applications for authority for two-way operations. During that filing window the Commission received more than 2,000 such applications. The Mass Media Bureau placed the applications on public notice on November 29, 2000, providing applicants 60 days in which to amend their applications.⁶ On February 2, 2001, the Bureau accepted the applications for filing, setting up a 60-day window for petitions to deny.⁷ That window closes April 2, 2001.

Concurrently, in July 2000 the Commission placed on public notice the Cellular Telecommunications & Internet Association (“CTIA”) Petition for Rule Making requesting that the Commission implement the results of WRC-2000 and allocate new spectrum for advanced

⁶ See *Mass Media Bureau Multipoint Distribution Service and Instructional Television Fixed Service Applications Tendered For Filing, Public Notice*, Report No. 148 (“November Public Notice”).

⁷ See *gen. February Public Notice*. The Mass Media Bureau just released a third public notice relating to the applications on file, in which it announced that it will grant applications not subject to petitions to deny or other requirements such as international coordination, by the end of the first week of April 2001. Furthermore, the Bureau indicates that a new rolling one-day application period will commence on April 16, 2001. See *March Public Notice*.

mobile services in harmonization with those bands that were identified for 3G worldwide.⁸ The CTIA petition specifically requests that the FCC consider the reallocation to fixed and mobile services of the 2500-2690 MHz band currently allocated for fixed services and occupied solely by ITFS and MDS licensees. In November 2000, only two weeks before the Mass Media Bureau placed the *Two-Way Applications* on initial public notice,⁹ Commission staff (including Mass Media Bureau staff) published an interim report on the potential use of the 2500-2690 MHz spectrum band for 3G services ("*Interim Report*"),¹⁰ in which it included band segmentation plans that might accommodate mobile services. Then, on January 5, 2001, the Commission released its *3G NPRM*, which discusses the *Interim Report*, raises a number of issues as to the appropriateness of the 2500-2690 MHz band for reallocation, and includes the band in one of its three options for reallocating spectrum for advanced mobile services.¹¹ The formal period for comment on the *3G NPRM* closed on March 9, 2001.

DISCUSSION

In the pending 3G proceeding, the Commission is working to determine the best spectrum management policy for accommodating 3G services in the United States. One proposal that the Commission is currently considering is the reallocation of the 2500-2690 MHz band and the division of that spectrum between incumbent fixed services and advanced services, including 3G.

⁸ See *Petition for Rule Making of the CTIA Concerning Implementation of WRC-2000; Review of Spectrum and Regulatory Requirements for IMT-2000*, RM-9920, at 2 (filed July 12, 2000) ("*CTIA Petition*"); see also *Third Generation Wireless/IMT-2000 Petitions, Public Notice*, DA 00-1673 (rel. July 28, 2000) (placing *CTIA Petition* on public notice).

⁹ See *November Public Notice*.

¹⁰ Office of Engineering and Technology, Mass Media Bureau, Wireless Telecommunications Bureau, and International Bureau, Federal Communications Commission, *Spectrum Study of the 2500-2690 MHz Band, The Potential for Accommodating Third Generation Mobile Systems, Staff Report ("Interim Report")* (Nov. 15, 2000).

¹¹ See *3G NPRM* at ¶¶ 55, 58-65, 69.

Just as this process moves forward, however, the Commission is poised to grant approximately 2,000 *Two-Way Applications*, an action that would, through a process of MDS and ITFS license swaps and license modifications to add transmit paths, alter the landscape of the 2500–2690 MHz band. By the Commission’s own admission, this step would greatly increase the costs incurred by ITFS/MDS incumbents if the FCC in fact does reallocate the 2500-2690 MHz band and adopts a segmentation plan.¹² With ITFS and MDS licensees set to invest resources in systems that may ultimately require replacement or substantial modification, this approach falls short of orderly decision-making. Verizon Wireless urges the Commission to instead defer from acting on the *Two-Way Applications* until it resolves the reallocation issues raised in the 3G rule making process.

The 3G comments from MDS and ITFS licensees reveal why the Commission must put first things first and address overarching reallocation policy before individual licensing decisions. These commenters address ITFS and MDS licensees’ efforts to “retool” the spectrum for two-way communications and how these efforts are reflected in the pending *Two-Way Applications*.¹³ Some commenters go so far as to suggest that the imminent, and potentially automatic, grant of the applications is a reason that the Commission should not consider segmenting the band to accommodate mobile services.¹⁴ It appears that these commenters consider the grant of these applications as a *fait accompli* and as such a “hammer” to compel the

¹² *Interim Report* at 59-60. The three band plans the FCC proposes in the *Interim Report* assume 90 MHz of spectrum for advanced mobile services; Verizon Wireless believes that only 60 MHz of the 2500-2690 MHz band would be required for such services. See *Verizon Wireless Comments* at 24-27.

¹³ See, e.g., Comments of Catholic Television Network at 26, (“*CTN Comments*”); Comments of the ITFS Spectrum Alliance at 4; Comments of National ITFS Association at ii (“*National ITFS Association Comments*”); Comments of Nucentrix at 5.

¹⁴ See, e.g., *National ITFS Association Comments* at 11. “According to the automatic grant provisions of the FCC’s two-way rules, unless there are petitions to deny or other reasons requiring the FCC to hold up approval, these applications will be granted on April 3, 2001.” *Id.* n. 16; see also Comments of IPWireless at 11 (“*IPWireless Comments*”).

Commission to reject segmentation of this band. In fact, the appropriate policy approach here is precisely the opposite – the Commission should defer action on the licenses so as not to affect its actions in the pending 3G proceeding. Those actions under law must be based on such policy considerations as the need for spectrum, the technical feasibility of alternative bands, public demand, and other general factors – certainly not on the fact that an application is on file.

The Commission’s consideration of a new segmentation plan for 2500-2690 MHz is not a reconsideration of the rules permitting two-way service. In fact, segmentation of the band does not require that the Commission reach such a result. Rather, Verizon Wireless argues elsewhere that ITFS and MDS licensees can offer the same two-way, broadband services more efficiently, and that there is ample spectrum to accommodate all users.¹⁵ Such segmentation would, however, likely involve moving existing users out of the band or to other frequencies in the band. Clearly this decision should precede consideration of individual applications.

It remains an outstanding question as to what approach the Commission will adopt with regard to the segmentation of the 2500-2690 MHz band and, in fact, the Commission has not reached any conclusion that the band cannot be used for advanced mobile services. Even those commenters on the *3G NPRM* that oppose segmentation of the 2500-2690 MHz band to accommodate advanced mobile services admit that the 3G proceeding creates uncertainty about the future use of particular portions of that band for two-way fixed applications.¹⁶ It is precisely because of this uncertainty regarding the future segmentation of the band that the Commission

¹⁵ See *Verizon Wireless Reply Comments* at 21-24; see also Reply Comments of VoiceStream Wireless Corporation to *3G NPRM*, at 4, 7 (Mar. 9, 2001).

¹⁶ “If the Commission quickly decides to preserve the 2.5 GHz band for MMDS and ITFS, removing the regulatory uncertainty, IPWireless’ technology could begin wide deployment in the U.S. in 2001 – to the benefit of consumers, business and education.” *IP Wireless Comments* at 4; see also *CTN Comments* at 25.

should defer grant of the *Two-Way Applications* until it resolves the issues it raises in the *3G NPRM*.¹⁷

Allowing the Mass Media Bureau to rush to grant these applications next week would not only be backward policymaking it would also be in conflict with previous decisions to defer licensing activities when considering a reallocation or reviewing the overall spectrum usage in a given frequency band. In 1987, as it initiated its inquiry on the introduction of advanced broadcast television technologies, the Commission temporarily froze the TV Table of Allotments in and around thirty TV markets.¹⁸ The Commission explained that this freeze was a necessary step in the potential reallocation of available broadcast spectrum to these new technologies. In particular, it stated that by foreclosing additional station assignments in the affected markets, the Commission would preserve sufficient spectrum for advanced television and maintain a range of reasonable spectrum management options in this frequency band.¹⁹

The Commission adopted a similar approach in 1991 in the 900 MHz paging spectrum. There, the Commission was considering new spectrum management approaches to the 900 MHz paging spectrum, with the goal of encouraging greater use of these frequencies and enhancing service quality in this band.²⁰ The Commission determined that in order to retain the flexibility to pursue a variety of regulatory options, it would freeze further licensing on these channels.²¹ More recently, in its 1999 proceeding regarding rules for the new low power FM radio service,

¹⁷ The Commission has noted elsewhere its intention to issue a Report and Order in the *3G NPRM* by June 30, 2001. *Interim Report* at Appendix 1.1, p. A-9.

¹⁸ *Advanced Television Systems and Their Impact on the Existing Television Broadcast Service*, RM-5811, 76 RR 2d 843 (1987) (“*DTV Freeze Order*”).

¹⁹ *DTV Freeze Order* at ¶¶ 1-2.

²⁰ *Acceptance of 929-930 MHz One-way Paging Applications, Order*, 6 FCC Rcd 6024 (Priv. R. Bur., rel. Aug. 1, 1991) (“*Paging Freeze Order*”).

²¹ *Paging Freeze Order* at ¶ 2.

the Commission indicated that it would not process any applications to provide such service until it issued such rules, unless an applicant's proposal was truly experimental in nature. The Commission stated that premature processing of such applications might prejudice the outcome of its rule making process.²²

Deferred consideration of the *Two-Way Applications* would be consistent with these prior decisions. The Commission's 3G policy strategy should result from an objective analysis of the technical feasibility of different spectrum bands, the extent of the demand for the respective services, and other public interest considerations. This is appropriately done prior to the grant of *Two-Way Applications*.

CONCLUSION

For the aforementioned reasons, Verizon Wireless urges the Commission to defer action on the MDS and ITFS applications requesting authority for two-way operations that are currently pending before the Mass Media Bureau.

Respectfully submitted,

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²² *Creation of a Low Power Radio Service, Notice of Proposed Rule Making*, 14 FCC Rcd 2471, n.1 (1999).

Certificate of Service

I hereby certify that on this 28th day of March copies of the foregoing “Emergency Petition to Defer Action on Applications” in ET Docket 00-258 were sent by hand delivery to the following parties:

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