

FCC Briefing Notes

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Auctioning of 2 GHz MSS Spectrum in 2003 – 2004 Would Be Bad Economics and Bad Policy

- There is a large backlog of spectrum for auction (54 MHz in the 700 MHz UHF bands; 22 MHz reallocated from the USG). And much more is in the pipeline (90 MHz at 1.7/2.1 GHz)
- Demand for spectrum is depressed. The wireless industry has very limited cash.
 - Ø Many wireless carriers wish to cancel C and F block auction results and get deposits back.
 - Ø Little interest in current lower 700 MHz auctions (C and D blocks).
- In this context, promoting the auction of 2 GHz MSS spectrum is bad economics (spectrum overhang will limit bids) and bad policy (MSS will be crippled; spectrum will lie fallow due to uncertainty)
- There is an alternative that better serves the public interest and preserves FCC's option to auction spectrum in 2005 or 2006.

Spectrum Flexibility Provides A Pragmatic, Market-Oriented Solution

- Grant flexibility now for 2 GHz MSS per precedent in MDS/ITFS band (2500 – 2690 MHz)

- Flexibility will let the market work:
 - Ø Market will decide if spectrum is best used for MSS with or without an ATC (Ancillary Terrestrial Component)

 - Ø Market will incent incumbents to negotiate with terrestrial wireless providers to fund build out of satellite/terrestrial systems.

- Flexibility preserves the FCC's option to auction some MSS spectrum in 2005 or 2006.
 - Ø Milestones will still apply; NGSO systems must launch satellites by January 2005 and GSO systems by July 2006.

 - Ø Companies that do not meet milestones will forfeit spectrum which might be reallocated and licensed by auction.

3G Services Do Not Need MSS Spectrum

- The FCC is expected to auction at least 174 MHz of new 3G spectrum by 2005:
 - Ø 48 MHz in the lower 700 MHz band
 - Ø 36 MHz in the upper 700 MHz band
 - Ø 90 MHz in the 1.7/2.1 GHz bands
- Approximately 30 MHz of PCS spectrum will be reaucted and/or relicensed after resolution of the NextWave litigation.
- FCC must also auction a 5 MHz national license and 17 MHz for regional/subregional licenses in bands reallocated from the US Government.
- It would be irrational for the FCC to propose the reallocation of any 2 GHz MSS spectrum at least pending the results of auctions for the 700 MHz and 1.7/2.1 GHz bands.

Estimated CMRS Spectrum Licensed By Band and Service in MHz: 2001 – 2005

	2001	2002	2003	2004	2005
Cellular (800 MHz)	50.0	50.0	50.0	50.0	50.0
PCS (1.8-1.9 GHz)	90.0 ¹	90.0	120.0	120.0	120.0
SMR (800-900 MHz)	26.6	26.5	26.5	26.5	26.5
Upper 700 MHz	—	—	—	36.0 ²	36.0
Lower 700 MHz	—	18.0 ³	18.0	48.0	48.0
1.7/2.1 GHz	—	—	—	30.0 ⁴	90.0
New Spectrum vs. prior year	—	18.0	30.0	96.0	60.2
New Spectrum cumulative	—	18.0	48.0	144.0	204.0
Total (MHz)	166.5	184.5	214.5	310.5	370.5

¹¹ Assumes NextWave's licenses were cancelled by operation of law on October 29, 1998 and that this and other defaulted licenses, comprising approximately 30 MHz of the PCS allocation, are relicensed.

² Assumes two licenses for C and D Blocks (totaling 30 MHz) and A and B guard bands (totaling 6 MHz) are licensed at the same time.

³ Assumes licenses for C and D Blocks of spectrum and Auction No. 44, which began in August 2002, are awarded by December 2002. Remaining 30 MHz of spectrum is assumed to be auctioned and licensed in 2004.

⁴ Assumes FCC adopts findings of July 22, 2002 NITA Report on viability of accommodating 3G systems on two 45 MHz blocks in the 1710 – 1755 MHz and 2110 – 2170 MHz bands, and that spectrum is licensed in two major tranches.

MSS Is Highest and Best Use of Previously Allocated 2 GHz Spectrum

- The FCC has repeatedly – 1997, 1998, 2000 and 2001 -- found that the current spectrum allocation for MSS best serves the public interest.

Mobile satellites are “an excellent technology for delivering basic and advanced telecommunications services to unserved rural, insular or economically isolated areas” 2 GHz MSS Service Rules Order (1998)

“2 GHz MSS systems will enhance competition . . . and promote development of regional and global communications to unserved communities . . . including rural and Native American areas . . .” ICO Licensing Order (2002)

- No factual basis has been provided for overturning the FCC’s prior public interest finding.

The Public Interest Is Best Served By Granting 2 GHz MSS Operators Spectrum Flexibility

- Flexibility will permit MSS operators to use spectrum now and attract much needed investment.
- Flexibility will spur competition between MSS and CMRS, especially in more rural areas.
- Much MSS spectrum will lie fallow until 2005 or later if it must be surrendered and reauctioned.

2 GHz Licensees Deserve The Same Spectrum Flexibility as 2.5/2.6 GHz MDS/ITFS 2 Licensees

- MDS/ITFS licensees in the 2500-2690 MHz band were granted flexible use for mobile services in September 2001
- The FCC added a “mobile” allocation because it would:
 - Ø promote spectrum efficiency
 - Ø let the market, not regulators determine best use of band (*e.g.*, because licensees can negotiate technical solutions with parties seeking alternative uses)
- No “windfall” to incumbent MDS/ITFS licensees.

“Permitting mobile use . . . simply allows incumbent licensees an additional option, but it is entirely possible that fixed use of the band will predominate . . .”
- No “windfall” also when FCC previously doubled protected contours and authorized two way digital services for MDS/ITFS licenses.

Critical Public Interest Goals Will Be Impaired Without Spectrum Flexibility

- Spectrum flexibility is essential for competition — MSV/TMI only viable N. American satellite provider competing with cellular/PCS providers
- Spectrum flexibility is essential for homeland security. Existing customers will be stranded without a follow on system.
 - FBI
 - Drug Enforcement Agency
 - FEMA
 - Red Cross
 - NYC City Fire Department
 - HHS
 - FAA

Granting Spectrum Flexibility Will Not Change The Rules

- 2 GHz MSS construction milestones will continue to apply.
- Spectrum flexibility will not excuse licensees from obligation to provide MSS.
- By July 2006, at latest, all MSS licenses must launch satellites or forfeit spectrum; non-GSO systems like ICO have January 2005 launch deadline.
- Hence, FCC should let market determine if MSS (with or without terrestrial component) is viable.

Spectrum Flexibility Would not Provide a “Windfall” For Incumbents

- TMI alone has spent more than \$300 million on 1st generation satellite. Next generation 2 GHz system will cost a similar amount.
- TMI's 2 GHz system has been planned for over 8 years and the FCC application was filed in 1997. TMI and parent, BCE, are long term providers of satellite services.
- Any market benefit from spectrum flexibility will likely be offset by additional construction costs for terrestrial networks.
- 2 GHz MSS operators will also face substantial multi-million dollar relocation costs to clear BAS and FS users.
- Mobile allocations for MDS/ITFS licensees did not create a “windfall”; that precedent should be controlling here.