

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
)	
A Proposal for Revising the MDS and ITFS)	RM-10586
Regulatory Regime)	
)	DA No. 02-2732
)	

To: The Commission

Reply Comments of The ITFS Spectrum Development Alliance, Inc.

The ITFS Spectrum Development Alliance, Inc. (“Alliance”)¹ hereby submits these reply comments on the proposal tendered to the Commission by the Wireless Communications Association International, the National ITFS Association, and the Catholic Television Network (collectively, the Petitioners),² resulting in the above-captioned proceeding.

The Alliance believes that the White Paper contains seminal ideas, and offers significant benefits to the ITFS community. However, we consider it to be a work in

¹ The Alliance was formed in 1999. It is composed of seven organizations that are licensed to operate ITFS systems in almost 100 communities nationwide, ranging in size from New York City to Hays, Kansas. It is a non-profit organization intended to provide member licensees with the full complement of technical and business representation needed to convert their systems successfully to digital two-way operation. The members of the Alliance are: Chicago Instructional Technology Foundation, Denver Area Educational Telecommunications Consortium, Hispanic Information & Telecommunications Network, Instructional Telecommunications Foundation, North American Catholic Educational Programming Foundation, Portland Regional Educational Telecommunications Corporation, and Twin Cities Schools’ Telecommunications Group.

² The Petitioners’ proposal is referred to herein as the White Paper.

progress, which is natural given the fact that it is for the first time undergoing an open peer review. In light of how the proposal was developed, we find it unsurprising that important ITFS licensees such as the Illinois Institute of Technology (“IIT”) and Stanford University came forward with their own perspectives, and found a good deal with which they differed.³

We agree with the many commenters that requested that the Commission issue a Notice of Proposed Rulemaking with respect to the matters set forth in the White Paper. We believe that the discussion will ripen---and hope that differences will narrow---as more voices are heard, both through this proceeding and the rulemaking which we urge the FCC to initiate.

Needless to say, we disagree with the ITFS Parties, whose joint comments “urge the FCC to endorse the Proposal in its entirety, without material alterations, given that the Proposal contemplates a very carefully and massively interrelated structure that works as proposed, but may not successfully work if certain components are missing or others are added.”⁴ We take it for granted that any new rules adopted by the Commission must be internally consistent, but we feel that it is much too early---and too many loose ends remain---to justify freezing the process. Indeed, if that claim of the ITFS Parties were true, then the portions of the White Paper which remain to be completed could not be incorporated.

It is incorrect to suggest that changes in the White Paper’s proposal will create negative consequences. The Petitioners recognized that improvements are needed by

³ We also note that commercial entities such as the members of the MMDS Licensee Coalition indicated that they were not included in the formulation of the White Paper. Comments of MMDS Licensee Coalition, p. 1.

⁴ Joint Comments of ITFS Parties, p. 3.

filing a supplement dated November 14 (“White Paper Supplement”) requesting no fewer than five changes. Similarly, the Alliance’s comments---and those of a number of other parties---offer what we believe to be constructive proposals to improve the White Paper, while not creating an inconsistent or unworkable system.

The Alliance is gratified that the White Paper Supplement acknowledges that Section 94.932(d) of the Commission’s Rules---as well as similar provisions applying to MMDS---are incompatible with the regulatory construct recommended by the Petitioners.⁵ We support the Petitioners’ request for an immediate suspension of these rules. However, we are puzzled that the Petitioners have not requested the permanent deletion of these sections, as BellSouth, the Alliance, and other parties did.⁶

We note that a number of commenters expressed concern that loose regulations on reimbursing the Proponent for transition costs, and other aspects of a Proponent-driven transition could cause a variety of problems, including the suppression of competition.⁷

Like IIT, the Alliance believes that the transition process set forth in the White Paper is unduly skewed in favor of the Proponent’s interests,⁸ and that the concept of transition “reasonableness” needs to be defined in much more detail.⁹ We also agree with IIT that existing lease agreements could be used as a means of impeding a transition.¹⁰ This belief is more than theoretical, in that an Alliance member was sued last year by an excess capacity lessee that sought to halt a voluntary frequency swap; this swap would

⁵ White Paper Supplement, pp. 6-7.

⁶ Comments of BellSouth Corporation and BellSouth Wireless Cable, Inc. (collectively, “BellSouth”), at p. 10. Letter comments of Network for Instructional TV, Inc. and the North Carolina Association of Community College Presidents, p. 5.

⁷ See, for example, the Comments of MMDS Licensee Coalition (p. 5), Comments of Dallas MDS Partners (p. 7), Comments of IIT (pp. 16-17, among other sections).

⁸ Comments of IIT (pp. 7-8).

⁹ *Id.*, pp. 7-9.

¹⁰ *Id.*, pp. 6-7.

have de-interleaved eight ITFS channels in Chicago and cleared the way for two-way data service to be offered by a competitor.

The Alliance stresses that rules governing the transition need to balance the needs of Proponents, of licensees, and of entities which later enter the market to compete with Proponents. The rules need to be written with much greater clarity and specificity than the White Paper's recommendations, lest the Commission find itself enmeshed in endless disputes between these three interest groups. We believe that the Commission's goal should be to establish a series of clearly-delineated steps that even contending groups can follow with the minimum potential for disagreements leading to adjudication.

Like the MMDS Licensee Coalition, we believe that there should be a transition safe harbor providing that "a transition imposed upon [licensees] against their will leave them in a position *no worse* than the default channel plan."¹¹ [Original emphasis.]

The Alliance agrees with the Clarendon Foundation ("Clarendon") that low-power two-way uses are likely to prove vital to the ITFS service.¹² However, we disagree with Clarendon that it is practical to make transitions a fundamentally local process. One problem with "localism" is the need to make ITFS/MMDS equipment that is compatible with not only national but also international standards.¹³ Only this level of mass production will make equipment in the ITFS/MMDS bands inexpensive enough to deploy widely. Another problem is that widely disparate local transition processes will make it harder to achieve the level of procedural uniformity required to avoid numerous disputes between Proponents and other stakeholders.

¹¹ Comments of MMDS Licensee Coalition, p. 7.

¹² Comments of Clarendon Foundation, p. 2. The usefulness of low-power two-way spectrum is well illustrated by the comments of Colorado State University, which set forth a number of important educational applications of such technology.

The Alliance disagrees with Rioplex Wireless, Ltd. (“Rioplex”) that the new bandplan is haphazard, with “frequencies strewn about the spectrum.”¹⁴ While there are many ways to lay out a bandplan---and disadvantages inhere in each---we think that the White Paper’s approach has many of the essentials right: contiguous two-way spectrum for each licensee; the ability to retain existing video services; and the flexibility to operate both FDD and TDD two-way systems within the band.

We appreciate the certainty and simplicity of the forced transition concept promoted by the MMDS Licensee Coalition,¹⁵ which would use the PCS approach of setting transition deadlines based upon market size. But, we believe that, while this concept may have worked well for PCS, the transition issues for ITFS and MDS vary considerably in type and difficulty from market to market; indeed, it may be that in many communities the correct answer will be to eschew a transition for a period of years, given that there may be successful ITFS video service and no burning need for two-way data service. As well, we see no means on the horizon to fund a national transition. For these reasons, we believe that a Proponent-created timetable for transitioning markets is a system better suited to ITFS/MDS transitions.

We endorse the thoughtful suggestions of Network for Instructional TV, Inc. and the North Carolina Association of Community College Presidents (“NITV/NCACCP”) for improving the White Paper. Like NITV/NCACCP, the Alliance believes that commercial “white knights” are an undesirable means of resolving mutually exclusive ITFS applications; that a trust fund model is the best means to insure reliable funding for

¹³ See, for instance the Comments of Nokia, Inc. (p. 2) and Qualcomm, Incorporated.

¹⁴ Comments of Rioplex, p. 4.

¹⁵ Comments of MMDS Licensee Coalition, pp. 2-4.

a transition;¹⁶ and that stronger safeguards are needed for ITFS licensees in connection with downconverter replacement.¹⁷

In conclusion, Alliance looks forward to working with other stakeholders and the Commission to refine the White Paper, and formulate effective rules to bring ITFS/MMDS service into the twenty-first century.

Respectfully submitted,

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Dated: November 27, 2002

¹⁶ The trust fund concept is also endorsed by IIT. See comments of IIT, pp. 11-12.

¹⁷ NIA/NCACCP letter comments, pp. 1-4.