

Before the  
**Federal Communications Commission**  
Washington DC 20554

In the Matter of	)	
	)	
Amendment of Part 2 of the Communications	)	
Rules to Allocate Spectrum Below 3 GHz for	)	ET Docket No. 00-258
Mobile and Fixed Services to Support the	)	
Introduction of New Advanced Wireless	)	
Services, including Third Generation Wireless	)	
Systems	)	

**Sprint Corporation Petition for Reconsideration**

Sprint Corporation, pursuant to Section 1.429 of the Commission’s Rules, hereby petitions for reconsideration of the Commission’s Second Report and Order in the above-captioned proceeding.<sup>1</sup> The Second Report and Order, without providing incumbent MDS licensees with replacement spectrum and without establishing a reimbursement plan that will keep incumbent licensees whole, reallocates spectrum in the 2150-2162 MHz band from Multipoint Distribution Service (“MDS”) to make it available for Advanced Wireless Services (“AWS”). Sprint has invested over a billion dollars to obtain MDS licenses (many of which were acquired by Sprint’s predecessors in interest pursuant to auction), leases of MDS/ITFS capacity and MDS/ITFS multichannel video programming systems, and use of the 2150-2162 MHz band is therefore particularly critical to Sprint. The Commission’s decision to reallocate

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<sup>1</sup> *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*, 17 FCC Rcd 23193 (2002) (the “*Second Report and Order*”).

licenses in the 2150-2162 MHz band without providing for full compensation by identifying a comparable replacement band and establishing a means of reimbursing licensees for relocation costs leaves Sprint and other MDS licensees stranded with nowhere to go and with no consideration for their investment or their rights as licensees. The decision is arbitrary and capricious and must be reversed.

## **Discussion**

The Commission has been examining the issues, including relocation issues, associated with making spectrum in the 2.1 GHz band available for advanced wireless services since WRC-2000.<sup>2</sup> The Commission initiated this proceeding in January 2001, with the issuance of a *Notice of Proposed Rulemaking*<sup>3</sup> that examined spectrum bands that could support AWS. In that proceeding, Sprint and other MDS licensees explained the unique issues associated with relocating incumbent MDS licensees in the 2150-2162 MHz band.<sup>4</sup> The following August, the Commission issued a *Memorandum Opinion and Order and Further Notice of Proposed Rule Making*,<sup>5</sup> that expanded the frequency bands under consideration. Sprint and other parties

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<sup>2</sup> See, *Interim Report -- Spectrum Study of the 2500-2690 MHz Band: The Potential for Accommodating Third Generation Mobile Systems*, ET Docket No. 00-232 (DA 00-2583, Nov. 15, 2000.)

<sup>3</sup> *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*, ET Docket No. 00-258, *Notice of Proposed Rulemaking and Order*, 16 FCC Rcd 596 (2001) (*NPRM*).

<sup>4</sup> See, e.g., Sprint Comments, ET Docket No. 00-258 (filed February 22, 2001) at 25-31.

<sup>5</sup> *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*, ET Docket No. 00-258, ET Docket No. 95-18, and IB Docket No. 99-81, *Memorandum Opinion and Order and Further Notice of Proposed Rule Making*, 16 FCC Rcd 16043 (2001) (*FNPRM*).

responded with comments and reply comments in the proceedings, addressing the relocation issues. Later, recognizing that greater study and interference analysis were necessary in order to identify suitable replacement spectrum, Sprint and other holders of MDS interests took it upon themselves to develop and submit their comprehensive “MDS Industry Compromise” which described a detailed and satisfactory solution to the relocation problem and would move MDS out of 2150-2162 to paired spectrum in the 1910-1916/1990-1996 MHz band.<sup>6</sup> Subsequently, comments were received from MDS licensees not involved in the drafting of the MDS Industry Compromise in this docket that were supportive of the proposal. Although three parties opposed the MDS Industry Compromise, their arguments were rebutted by the MDS industry.<sup>7</sup> Thus, the issues of identifying a relocation band and establishing a suitable reimbursement plan had been fully vetted and were ripe for consideration.

Nevertheless, in the Second Report and Order, the Commission disregarded the comments, concerns, and reallocation proposals before it and simply reallocated spectrum from MDS licensees to AWS. Instead of analyzing and resolving the issues before it, the Commission reallocated the 2150-2162 MHz band without addressing the issue of replacement spectrum and cost, stating merely that it recognized that it needed to provide relocation spectrum and

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<sup>6</sup> See Comments of Sprint Corporation, filed Oct 21, 2001 (“Sprint 00-258 Comments”); Reply Comments of Sprint Corporation, filed November 8, 2001 (“Sprint 00-258 Reply Comments”); Letter from the Wireless Communications Association International, Inc., *et al.*, to Michael K. Powell, Chairman, Federal Communications Commission, ET Docket No. 00-258 (filed July 11, 2002).

<sup>7</sup> See Letter from The Wireless Communications Association International, Inc. *et al.*, ET Docket No. 00-258, IB Docket No. 01-185, and WT Docket No. 02-55 (filed Sept. 23, 2002); Letter from The Wireless Communications Association International, Inc. *et al.*, ET Docket No. 00-258 *et al.* (filed Sept. 5, 2002).

reimbursement procedures and would “conduct further analysis,” find relocation spectrum, and craft appropriate relocation procedures at an unspecified later date.<sup>8</sup>

While Sprint certainly understands that finding relocation spectrum for 2150-2162 and devising a reimbursement plan are difficult prerequisites to relocating band occupants, they are nevertheless prerequisites, and the Order’s unprecedented clearing of spectrum prior to resolving these issues leaves displaced licensees--who acquired their rights to the spectrum at considerable cost -- and their customers orphaned with nowhere to go. It flies in the face of Commission precedent. It is not enough to continue to string licensees along with promises of a future home, particularly while other ongoing proceedings further threaten to reduce the suitable “homes” available.<sup>9</sup> The Commission must use the full record before it and ensure that MDS licensees are made whole and their customers ensured of continued service before ousting them from their spectrum.

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<sup>8</sup> *Second Report and Order* at ¶¶ 6 and 41, stating: “[I]n light of our decision in this Second R&O to reallocate 5 megahertz of spectrum in the 2150-2155 MHz band, we will conduct further analysis of MDS operations, including relocation options for MDS licensees that currently operate in the 2150-2160 MHz band,” and “[w]e recognize that our decision here to reallocate the 2150-2155 MHz band from MDS to AWS use requires that we address certain issues regarding MDS operations. In particular, we will have to consider relocation spectrum and propose relocation procedures for MDS, keeping in mind the need to avoid disruption to existing customers. Because we do not anticipate licensing the band for new services until after we adopt service rules, and because the companion Federal Government transfer spectrum in the 1710-1755 MHz band will not be available until 2004, there is sufficient time for us to identify in a separate proceeding to be initiated in the near future any necessary relocation spectrum for MDS licensees and to craft appropriate relocation procedures. In addressing relocation, however, we recognize the importance of avoiding unnecessary delay so as to minimize uncertainty to existing licensees.”

<sup>9</sup> *See*, WCA AWS Service Rules Comments at 2 (filed Feb. 7, 2003), stating that: “by addressing these issues in separate proceedings at separate times, the Commission has thrust MDS into the spectrum version of musical chairs – as each round is completed it becomes more and more likely that, once the spectrum needs of others have been satisfied [by] the Commission, there will be no satisfactory spectrum to which MDS channel 1 and 2/2A Licensees can be involuntarily relocated to make room for AWS.”

Adding an additional layer of gravity and uncertainty to the matter is the Commission's recent release of the Third Report and Order, which throws Sprint's rights and the future of Sprint's MDS operations and customers into even greater confusion.<sup>10</sup> For example, in the Third Report and Order, the Commission appears to cling ever more closely to the notion that microwave relocation procedures established in the *Emerging Technologies* proceeding would be appropriate for MDS, stating that:

[i]n the Emerging Technologies proceeding, we allowed new entrants to provide incumbents with comparable facilities using any acceptable technology. Under this policy, incumbents must be provided with replacement facilities that allow them to maintain the same service in terms of throughput, reliability and operating costs. We continue to believe that ... a similar approach is warranted for MDS.<sup>11</sup>

This approach is taken despite the fact that Sprint and others have explained that existing microwave relocation procedures designed for point-to-point, non-consumer services are not suitable to MDS relocation and would not leave MDS licensees whole.<sup>12</sup> As Sprint stated, “[u]nlike other relocation proceedings which involved relocating internal microwave links, and under which the Commission’s *Emerging Technologies* relocation policy might have been appropriate, in the case of MDS/ITFS bands, the Commission would be forcing relocation of

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<sup>10</sup> *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 et al.*, ET Docket No. 00-258, *et al.*, FCC 03-16 (rel. Feb 10, 2003) (“Third NPRM”).

<sup>11</sup> *Id.* at ¶ 72.

<sup>12</sup> See *Redevelopment of spectrum to Encourage Innovation in the Use of New Telecommunications Technologies, Report and Order*, 7 FCC Rcd 6886 (1992), *Third Report and Order and Memorandum Opinion and Order*, 8 FCC Rcd 6589 (1993).

licensees who are providing service to thousands of residential and business customers.”<sup>13</sup> For the Commission to lump the services together and force the square peg of MDS into the round hole of traditional point-to-point microwave is, again, to completely disregard reasoned arguments made by interested parties and arbitrarily apply rules based on convenience rather than reasoned decisionmaking.

The Commission’s decision in the Second Report and Order in ET Docket No. 00-258, and its reasoning with respect to MDS relocation in the subsequent Third Report and Order are arbitrary and capricious and deny MDS licensees the rights to which they are entitled.<sup>14</sup>

## **Conclusion**

After receiving comments and reply comments on the relocation of MDS from 2150-2162 MHz and after reviewing several iterations of the MDS Industry Compromise developed and proposed by major holders of rights to MDS spectrum, the Commission disregarded the comments, concerns, and reallocation proposals and simply reallocated the spectrum in its *Second Report and Order* without addressing the issues of replacement spectrum and cost reimbursement . This denied licensees their unfettered rights to spectrum acquired and paid for at auction without compensation and without a reasoned explanation for the Commission’s

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<sup>13</sup> Sprint 00-258 Comments at 5. *See also* WCA NPRM Comments at 49; WCA FNPRM Comments at 5-6.

<sup>14</sup> Sprint has stated repeatedly that it would prefer that the Commission allow MDS 1 and 2/2A to continue to operate in the 2150-2162 MHz band; however, in the spirit of cooperation, Sprint stated that it would be willing to relocate if the Commission deemed it necessary and if acceptable replacement spectrum were identified. Sprint also stated that “unless truly comparable spectrum is offered to current occupants of the 2150-2162 MHz band, and unless a plan is devised for complete reimbursement of Sprint and its customers for relocation costs, Sprint would oppose any relocation plan.” Unfortunately, the Commission’s action has forced it to do just that.

action or its plans for the MDS licensees. The decision was arbitrary and capricious and denies MDS licensees the rights to which they are entitled. The decision should be reversed.

Respectfully submitted,

Sprint Corporation

By \_\_\_\_\_ //s \_\_\_\_\_

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