

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

**In the Matter of**

Amendment of Part 2 of the Commission's  
Rules to Allocate Spectrum Below 3 GHz  
for Mobile and Fixed Services, including  
Third Generation Wireless Systems

ET Docket No. 00-258

**COMMENTS OF NUCENTRIX  
BROADBAND NETWORKS, INC.**

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## Summary

With the Third Notice of Proposed Rulemaking in this proceeding (“*Third NPRM*”), the Commission has decided to move MDS licensees from their current home in the 2150-2162 MHz band. However, the FCC has not yet decided (nor even proposed) where these licensees will go instead.

This proceeding is the first occasion on which the FCC has taken auctioned spectrum away from the auction winners, and sought to relocate those licensees. The agency’s authority to take this unprecedented step is not at all clear. However, at the very least, the auctioned nature of this spectrum demands that the Commission must provide the licensees in question with access to comparable replacement spectrum. To do otherwise would run afoul of both Constitutional principles and general precepts of contract law. Beyond the effect on this proceeding, changing the terms of the auctioned spectrum will have a negative effect on all future auctions.

The *Third NPRM* also does not adequately set forth the procedures that the FCC will use to handle the MDS migration to its new spectral home. The FCC must ensure that all licensees and authorization holders, even those not yet operating, have access to adequate spectrum.

Finally, the *Third NPRM* fails to acknowledge that the Wireless Communication Association International, Inc. (“WCA”) proposal is the only one that provides MDS licensees with comparable spectrum. Despite numerous opportunities to do so, no other commenters have put forth viable options. Those suggestions that have been made suffer from numerous technical problems that make them unworkable. For this reason, the Commission must adopt the proposal advocated by WCA, and grant the MDS licensees spectrum at 1910-1916/1990-1996 MHz.

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Nucentrix Broadband Networks, Inc. (“Nucentrix”) hereby submits its comments in response to the Commission’s public notice in the above-captioned proceeding. As the third largest holder of licensed and leased MDS and ITFS spectrum in the country, Nucentrix has a substantial interest in any option that the FCC eventually selects for relocation of the MDS licensees who currently occupy the 2150-2162 MHz band.

**I. Any Spectrum Selected for Relocation of MDS Licensees Must Be Comparable to the Spectrum Purchased At Auction.**

In its Third Notice of Proposed Rulemaking the Commission proposes to reallocate the remaining MDS spectrum (2155-2160/62) for Advanced Wireless Services (“AWS”).<sup>1</sup> Unfortunately, the Commission does not designate a new spectral home for Nucentrix and the other MDS licensees who currently reside on the 2150-2162 MHz band.<sup>2</sup> In addition, the Commission requests comment on whether MDS should be given the same *amount* of spectrum, inferring that the MDS licensees could receive *less* spectrum than they originally purchased at auction.<sup>3</sup> As the Wireless Communications Association International, Inc. (“WCA”) has previously pointed out, the primary objective of spectrum reallocation is to make the subject of an involuntary spectrum move whole.<sup>4</sup> To become whole, a licensee must be relocated to comparable spectrum. The Commission cannot make a licensee whole if it gives the licensee a smaller amount of spectrum in a less suitable location.

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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*, Third Report and Order, Third Notice of Proposed Rulemaking and Second Memorandum Opinion and Order, ET Docket No. 00-258, ¶ 68 (rel. February 10, 2003) (“*Third NPRM*”).

<sup>2</sup> *Id.* ¶ 72 (soliciting comment on the amount and location of spectrum necessary to relocate the MDS licensees).

<sup>3</sup> *Id.* ¶¶ 72-73 (emphasis added).

<sup>4</sup> Comments of Wireless Communications Association International, Inc., ET Docket No. 00-258, at 6 (filed October 22, 2001) (“*WCA FNPRM Comments*”).

Nucentrix and the other MDS licensees spent billions of dollars to acquire their spectrum rights and to develop related infrastructure. Because they are being involuntarily relocated, Nucentrix and other licensees should receive spectrum which is comparable to that they are losing. As explained in Section IV, *infra*, the record shows that the paired spectrum in the 1910-1916/1990-1996 MHz band is the only suitable choice for replacement spectrum.

**A. The Auction Statute Does Not Give the FCC Authority to Repossess Auctioned Spectrum and No Precedent Exists For Taking Auctioned Spectrum Away From Current Licensees.**

Nucentrix and other MDS licensees purchased many of their spectrum rights at the FCC's 1996 nationwide auction of MDS Basic Trading Area ("BTA") authorizations. This auction was conducted pursuant to 47 C.F.R. § 309(j), which authorizes the FCC to auction spectrum. However, this statute does not authorize the FCC to repossess spectrum bought legally at auction and held by a qualified licensee. The Commission cannot substantially change the terms or results of an auction after its completion.<sup>5</sup>

The eviction of the MDS licensees from the 2150-2162 MHz band represents the first time the Commission has repossessed spectrum rights validly purchased at auction.<sup>6</sup> Until now, bidders at Commission spectrum auctions could predict with confidence the risks and rewards of successful bids. Although the events of the last several years in the telecommunications industry have shown that it is impossible to precisely predict one's financial future, successful bidders

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<sup>5</sup> See *U.S. Airwaves, Inc. v. FCC*, 232 F.3d 227, 235 (D.C. Cir. 2000) ("U.S. Airwaves") (stating the circuit court "start[s] from the intuitive premise that an agency cannot, in fairness, radically change the terms of an auction after the fact.")

<sup>6</sup> See *WCA FNPRM Comments* at 13.

were at least secure in the knowledge that they would get, and could keep, what they paid for.<sup>7</sup>

The FCC should not use this proceeding to vitiate these rights.

**B. The FCC is Prohibited From Altering the Terms of the Auction Without Adequate Compensation By General Contract and Constitutional Principles.**

Long ago the D.C. Circuit recognized that entities receiving a license from the FCC acquired a valuable property interest.<sup>8</sup> This property interest, if repossessed by the Commission without just compensation, raises the potential for a Fifth Amendment takings challenge. The United States Supreme Court uses three factors of “particular significance” to analyze a takings question: “(1) ‘the economic impact of the regulation on the claimant’; (2) ‘the extent to which the regulation has interfered with distinct investment-backed expectations’; and (3) ‘the character of the governmental action.’”<sup>9</sup> Considering the substantial sums that MDS licensees paid for the 2150-2162 MHz band, and the resources they have expended on deploying the necessary facilities to utilize it, the repossession of that spectrum without the compensation of comparable spectrum elsewhere may amount to a Fifth Amendment taking.

The Commission’s repossession of the 2150-2162 MHz band does not need to rise to the level of a Fifth Amendment taking to be legally infirm. Detrimental reliance by licensees or

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<sup>7</sup> That is not to say that no precedent exists for FCC modification of auction procedures. In *U.S. Airwaves* the D.C. Circuit upheld the Commission’s post-auction modification of the financial terms applicable to auction winners. See *U.S. Airwaves* at 236. However, as the WCA has pointed out, “[t]he Commission’s repossession of the 2150-2162 MHz band is a repossession of the asset that winning MDS bidders bought and paid for at the Commission’s 1996 MDS BTA auction” and “not a mere *post hoc* adjustment to the MDS auction rules in response to unanticipated changes in market conditions.” Petition for Reconsideration of the WCA, ET Docket No. 00-258, at 18 (filed Feb. 24, 2003) (“*WCA Petition for Reconsideration*”).

<sup>8</sup> See *Yankee Network, Inc. v. FCC*, 107 F.2d 212, 217 (D.C. Cir. 1939) (“It is...apparent that the granting of a license by the Commission creates a highly valuable property right, which, while limited in character, nevertheless provides the basis upon which large investments of capital are made and large commercial enterprises are conducted.”(citations omitted)).

<sup>9</sup> *Connolly v. Pension Benefit Guar. Corp.*, 475 U.S. 211, 224-225 (1986) (citation omitted).

even applicants can give rise to a claim against the Commission.<sup>10</sup> MDS licensees purchased their spectrum at auction and have continued to develop their infrastructure to allow for efficient utilization of that spectrum, spending billions of dollars along the way. Throughout this time the licensees have maintained a reasonable expectation that they could keep what they paid for, or at least would receive comparable spectrum should the Commission decide that the public interest required the 2150-2162 MHz band for other uses. An unremedied failure of the integrity of the auction process will undermine that reliance.

Additionally, the disruption of the auction system raises issues of contract law. As WCA put it: “A forced relocation of [the MDS] licensees to inferior spectrum would deny them the benefit of their bargain and undermine the integrity of the Commission’s auction process.”<sup>11</sup> When an auctioneer accepts the bid of a participant in an auction, it marks the seller’s acceptance of the bidder’s offer to form an executory contract.<sup>12</sup> Payment of the bid price executes the contract.<sup>13</sup> The Commission has consistently recognized the applicability of these premises of auction law to its own auction process.<sup>14</sup> In this situation the MDS licensees have both qualified

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<sup>10</sup> See *Mobile Communications Corp. of Am. v. FCC*, 77 F.3d 1399 (D.C. Cir. 1996) (holding that the FCC failed to engage in reasoned decision-making when it failed to consider the reliance interest of appellant); See also *McElroy Elec. Corp. v. FCC*, 86 F.3d 248, 257 (D.C. Cir. 1996) (noting the applicant’s equitable interest in the enforcement of the Commission’s cut-off rules).

<sup>11</sup> Reply Comments of Wireless Communications Association International, Inc., ET Docket No. 00-258, at 6, fn. 11 (filed Nov. 8, 2001) (“WCA FNPRM Reply Comments”).

<sup>12</sup> 7 Am Jur. 2d, *Auctions and Auctioneering* § 34 (1997) (“7 Am Jur. 2d, § 34”); see also *In re Nextwave Pers. Communications, Inc.*, 200 F.3d 43, 60-61 (2d Cir. 1999) (holding that Nextwave’s obligation to pay began with the acceptance of its auction bid).

<sup>13</sup> 7 Am Jur. 2d, § 34.

<sup>14</sup> See *BDPCS, Inc.*, 15 FCC Rcd 17590, 17601 (July 11, 2000) (noting Commission announcement of high bid functions the same as at other auctions and establishes a binding obligation to pay); see also *Amendment of the Commission’s Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licenses*, 14 FCC Rcd 6571, 6582, n.66 (April 5, 1999) (noting Commission auction rules create a mutual obligation on the bidder to pay and the FCC to grant the license won if the bidder qualifies under Commission rules).

for the licenses they purchased and made the requisite payments. Therefore, should the Commission maintain its course and repossess the 2150-2162 MHz band without reallocating comparable spectrum to the licensees, the potential exists for a breach of contract.<sup>15</sup>

The MDS licensees have not obstinately demanded specific performance of the contracts they entered into as a result of the 1996 auction, and have consistently expressed their willingness to compromise with the Commission and work with the Commission on solving the complex spectrum allocation problems associated with Advanced Wireless Services (“AWS”) and/or Third Generation wireless systems (“3G”). However, MDS licensees must receive comparable spectrum in exchange for their flexibility.

## **II. Seizing MDS Spectrum Without Providing Comparable Spectrum Will Set A Bad Precedent For Future Auctions.**

Clearly the uncompensated repossession of validly auctioned spectrum rights could have unintended effects beyond the current proceedings, and could seriously undermine the spectrum auction system altogether. The precedential nature of the Commission’s decision in this situation should not be underestimated. If MDS licensees are not made whole with comparable spectrum, the precedent established could have serious future consequences. The specter of uncertainty and excessive risk will loom over all future spectrum auctions. Participants will not know how long they will possess the spectrum they win at auction, and cannot be certain what they will receive, if anything, should the FCC decide their spectrum rights would be best utilized for other purposes.

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<sup>15</sup> See *Franconia Assoc. v. United States*, 122 S.Ct. 1993, 2001 (2002), quoting *Mobil Oil Exploration & Producing Southeast, Inc. v. United States*, 530 U.S. 604, 607 (2000) (“When the United States enters into contract relations, its rights and duties therein are governed generally by the law applicable to contracts between private individuals”).

Potential auction participants will closely examine the Commission's actions as part of their decision making process. If these actions lead to increased uncertainty and risk, the potential participants may avoid spectrum auctions altogether. This could deprive the FCC of precisely the kind of entities that they want to bid on and win spectrum. The type of entrepreneurial bidders the Commission relies upon to bring new ideas, new products, and healthy competition to the marketplace may decide to avoid the newfound pitfalls of the auction system and invest their money and energies elsewhere.

Even if entrepreneurial entities remain in the auction process, they will need to re-examine the resources they are willing to commit to the enterprise. Those that currently own spectrum rights and those who have interest in bidding on rights will need to reconsider how much capital they are willing to invest to develop their spectrum. Including money spent at the FCC's BTA auction, Nucentrix has invested over \$330 million in licenses, spectrum leases, and infrastructure for its broadband and wireless cable operations.<sup>16</sup> Considering the current economic climate in the telecommunications sector, it would be unrealistic to think potential bidders would not drastically lower the amount of capital they are willing to invest if the Commission decides to allow substantial investment to be stranded without just compensation.

### **III. The Commission's Prior Procedures for Relocating Licensees Are Inadequate.**

#### **A. Point-to-Point Procedures Do Not Apply to the Infinitely More Complex Task of Relocating Point-to-Multipoint Services.**

The NPRM cites no precedent for the migration of a mass-market, point-to-multipoint service from one spectral home to another. The only proceeding that the Commission does cite in the NPRM involved moving Broadcast Auxiliary Service ("BAS") licenses out of the way of

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<sup>16</sup> Comments of Nucentrix, ET Docket No. 00-258, at 3 (filed October 22, 2001).

MSS service, and the main thrust of that citation is whether it is acceptable to provide smaller chunks of spectrum when relocating services.<sup>17</sup>

It is clear that the transition MDS will have to make is far more complex than the transition made by the BAS licensees. Unlike BAS, MDS is a mass-market service, with receivers and transmitters held in some instances by the general public. Retuning the equipment used in this service in order to change to different spectrum is thus not a matter of a limited number of licensees using professional equipment, but rather the recall and replacement of a substantial number of existing consumer devices. The kind of “flash cut” date that the Commission considered in the BAS case would be impossible to coordinate in the MDS context, and even the phased rollout that the agency ultimately adopted would present substantial concerns.<sup>18</sup>

The NPRM thus fails to acknowledge the unique set of challenges imposed by relocating the MDS service. The FCC cannot simply pound the square peg of MDS service into the round hole of existing spectrum relocation policies, but must instead undertake a careful analysis of which licensees and stakeholders must be protected, and how to best conduct the transition so

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<sup>17</sup> *Third NPRM*, ¶ 72, citing Amendment of Section 2.106 of the Commission’s Rules to Allocate Spectrum at 2 GHz for Use by the Mobile Satellite Service, 15 FCC Rcd. 12315 (2000). Even in this context, the BAS proceeding is inapposite. As WCA explains in more detail in the comments it is filing concurrently, the BAS licensees did not pay for their licenses at auction, and experienced no degradation in service as the result of relocation. 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, Comments of Wireless Communications Association, International, Inc. in Response to Third Notice of Proposed Rulemaking (filed Apr. 14, 2003) (“*WCA Third NPRM Comments*”). In contrast, MDS licensees and authorization holders purchased the right not simply to provide one limited service offering, but rather to use a defined amount of spectrum to provide a range of consumer services. The only way to provide MDS licensees and authorization holders with comparable “facilities” is to grant them access to equal spectrum.

<sup>18</sup> *Amendment of Section 2.106 of the Commission’s Rules to Allocate Spectrum at GHz for Use by the Mobile-Satellite Service*, 15 FCC Rcd 12315, 12326 (2000).

that these entities are not unduly threatened and consumers are not needlessly subjected to onerous and confusing procedures.

**B. Because of the Auctioned Nature of the Service, the Commission Cannot Ignore Secondary License Holders or Those Not Currently Offering Service**

In the NPRM, the Commission notes that in 1992 certain portions of the MDS band (2160-2162 MHz) were reallocated to emerging technologies.<sup>19</sup> While then-existing MDS stations retained their primary status, any new applications would be secondary to Emerging Technology licenses.<sup>20</sup> In 1996, the Commission auctioned a large amount of MDS spectrum in Basic Trading Area blocks; as the NPRM explains, a note in the bidder information package specified that because the 2160-2162 MHz had been assigned to emerging technologies, “any subsequent MDS use of these 2 MHz will be secondary.”<sup>21</sup> The NPRM then suggests that under the FCC’s relocation procedures, “only stations with primary status are entitled to relocation,” and thus presumably those licensees that purchased 2160-2162 MHz rights at auction in 1996 will not be entitled to relocation.<sup>22</sup>

In brushing aside the rights of the licensees who hold secondary authorizations, the agency has given too little consideration to the auctioned nature of this spectrum. While secondary licenses are not as valuable (or as useful) as licenses that exist on a primary basis, the fact that there were bidders at the auction shows that these licenses have *some* utility. In deciding how to bid on these licenses, the participants in the auction necessarily analyzed both the existing and likely future level of encumbrance for these licenses, and modified their

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<sup>19</sup> *Third NPRM*, ¶ 67.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at fn. 169.

<sup>22</sup> *Id.* ¶ 72.

maximum bid amounts accordingly. By radically altering the primary service in this band without any consideration for the secondary users, the FCC is either altering this underlying calculus or eliminating the utility of this auctioned spectrum completely. As noted above, general principles of contract and constitutional law constrain the Commission's ability to unilaterally alter the terms applied to auctioned spectrum. The agency cannot simply ignore those parties who, in good faith, paid for contingent spectrum rights.

It is also unclear from the NPRM how the Commission intends to treat those BTA holders who have not yet built out their facilities. While the NPRM discusses accommodations that must be made for incumbent facilities, it also suggests that only those stations currently offering service must be relocated.<sup>23</sup> To the extent that the FCC is saying that only existing facilities require funding from incoming licensees to move their facilities to different frequencies, Nucentrix concurs. After all, an as-yet unbuilt station does not need to be "relocated," *per se*.

However, it is critical that the agency not deprive those authorization holders who have not yet built facilities of the benefit of their bargain. Each BTA holder must therefore receive access to comparable replacement spectrum, even if the holder has not yet built out facilities.<sup>24</sup> As the Commission recently recognized in the *ITFS/MDS NPRM*, viable two-way service in the MDS/ITFS sector has faced many technical and regulatory challenges.<sup>25</sup> The five-year build-out

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<sup>23</sup> *Id.* ¶¶ 71-73.

<sup>24</sup> The Commission must also take into account those BTA holders who purchased contingent rights for encumbered spectrum. As with the secondary authorizations, these BTA rights were purchased at auction, and while the value of an encumbered BTA may be less than that of an unencumbered BTA, the FCC cannot simply repossess these authorizations without compensation.

<sup>25</sup> *In the Matter of Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access*, Notice of Proposed Rule Making and Memorandum Opinion and Order, WT Docket No. 03-66, ¶ 27-28 (rel. April 2, 2003).

requirement, which for most BTAs would have ended in 2001, was extended by the Mass Media Bureau until August of 2003, and that deadline has been suspended during the pendency of the bandplan rulemaking.<sup>26</sup> As a result, there are BTA authorization holders who have quite properly not built out their entire BTA, as they anticipate moving to the new, portable and mobile technology platform that the Commission is finalizing in the *ITFS/MDS NPRM*.

These authorization holders purchased the right to utilize the spectrum at 2160-2162 MHz at auction, and the FCC cannot extinguish these rights simply because the holders have not met a build-out obligation that has not yet come due. Instead, these authorization holders, as with incumbent station operators, must receive spectrum comparable to that purchased at auction.

#### **IV. The Only Comparable Spectrum So Far Identified is 1910-1916 and 1990-1996 MHz.**

##### **A. WCA's Proposal Contains the Only Comprehensive Technical Data Presented Thus Far in this Proceeding.**

The current NPRM represents the third time that the FCC has solicited comments on potential spectrum that would be suitable for MDS relocation. While the Commission has forged ahead with its decision to relocate MDS, it has not yet identified which spectrum, if any, will provide a comparable location for the MDS licensees and BTA holders currently in the 2150-2162 MHz band. Indeed, the response to the Commission's prior calls for technical information has been notably lackluster. To date, only the WCA has submitted a detailed, comprehensive proposal for MDS relocation. Rather than continually asking the same question hoping for a different answer, the Commission must accept that the 1910-1916 and 1990-1996 MHz spectrum

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<sup>26</sup> *Id.* ¶¶199-200.

identified by WCA is the only comparable spectrum available to the soon-to-be homeless MDS industry.

The Commission's NPRM sets forth no preferred alternative or tentative conclusion with respect to where MDS should be relocated.<sup>27</sup> Indeed, the agency does not even establish a number of competing solutions for comment by the public. Instead, the NPRM seeks in the most general language possible "additional comment on the appropriate relocation spectrum," and puts the onus on commenters to "address what spectrum should be used to accommodate existing MDS operations."<sup>28</sup> Earlier in the text, the NPRM does broadly discuss a number of allocation schemes which at least in part involve MDS, but the Commission addresses only in passing the specific advantages and disadvantages of these approaches with respect to the involuntary relocation of MDS licensees.

The paucity of guidance provided by the *Third NPRM* reflects the lack of viable alternatives that are before the agency. Despite the fact that the Commission has asked for public comment on this issue twice before, interested parties have generally either been unable or unwilling to put forth plans that contain a satisfactory level of detail and address the major outstanding questions. As WCA noted in its Reply Comments to the *Further NPRM*, "precious little technical data has been added to the record to confirm whether any candidate band can offer truly comparable spectrum."<sup>29</sup> WCA's Reply Comments catalogued the deficiencies of the various spectrum proposals advanced in response to the *Further NPRM*, illustrating that the

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<sup>27</sup> *Id.* ¶ 73.

<sup>28</sup> *Id.* Detailed arguments regarding the wisdom of moving MDS facilities prior to selecting a new location for these licensees are beyond the scope of these comments. However, because this move seriously jeopardizes the rights of MDS licensees, Nucentrix supports the Petition for Reconsideration of the Commission's decision on the relocation of MDS recently filed by the WCA. See generally *WCA Petition for Reconsideration*.

<sup>29</sup> *WCA FNPRM Reply Comments* at i.

proposals offered failed to provide the requisite technical analysis of the bands proposed, failed to address interference concerns, failed to discuss the possibility and extent of operational restrictions on either MDS facilities or those of adjacent spectrum holders, and failed to discuss the extent to which guardbands were necessary and whether such guardbands could even be practically accommodated.<sup>30</sup> In short, the alternatives given to the FCC were little more than ranges on a spectrum chart, with little or no documentation or analysis supporting them.

In the period since the comment cycle on the *Further NPRM*, WCA and other MDS stakeholders have worked to reach a technically viable solution. While the proponents of the various schemes submitted in response to the *Further NPRM* have not submitted the technical information necessary to respond to the problems raised in WCA's Reply Comments, the MDS industry has taken the lead in establishing a reasonable, workable and equitable solution. In July of last year, the industry submitted a very specific and heavily documented proposal for using paired spectrum in the 1910-1916 and 1990-1996 MHz band for MDS services.<sup>31</sup> This plan will not cause adverse interference to existing incumbent licensees, will safeguard the rights of MDS licensees, and because it has the general support of the industry, will facilitate clearing of the current MDS band for future uses.

To date, the MDS industry compromise plan remains the only viable alternative put before the Commission. In the absence of solid technical data concerning the plans submitted by other parties, WCA and the MDS industry have conducted their own technical inquiry into the feasibility of these options. Rather than answering the questions posed by WCA in its Reply Comments, the results of these technical analyses call further into doubt the ability of any of

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<sup>30</sup> *Id.* at 4, 11, 14, 15.

<sup>31</sup> See Letter from Wireless Communications Association, *et al.*, to Michael K. Powell, Chairman, FCC, ET Docket. No. 00-258 (filed Jul. 11, 2002).

these plans to offer a solution that successfully safeguards the interests of all involved parties.

The comments of WCA in response to the *Third NPRM*, which are being filed concurrently, contain a detailed discussion of these issues, and there is no need to repeat this analysis here.<sup>32</sup>

Suffice to say that Nucentrix is troubled by the substantial issues raised by WCA's technical inquiry, and believes that these concerns convincingly demonstrate that the 1910-1916/1990-1996 MHz proposal is the only equitable solution to the problem of MDS relocation.

## V. Conclusion

For the reasons set forth above, Nucentrix requests that the Commission adopt the 1910-1916/1990-1996 MHz proposal advocated by WCA.

Respectfully submitted,

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<sup>32</sup> See generally *WCA Third NPRM Comments*.