

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

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

REPLY TO JOINT OPPOSITION

Sprint Corporation, pursuant to Section 1.429(g) of the Commission's Rules, hereby submits its reply to the AT&T Wireless Services, Inc. ("AT&T") and Verizon Wireless ("Verizon") Joint Opposition to Sprint's Petition for Reconsideration of the Commission's *Second Report and Order* in the above-captioned proceeding.¹

In the Joint Opposition, AT&T and Verizon urge the Commission to reject appeals by Sprint and the Wireless Communications Association International, Inc. (WCA) that the Commission reconsider its decision to reallocate Multipoint Distribution Services (MDS) from spectrum which those services currently occupy at 2150-2162 MHz without designating comparable relocation spectrum or reimbursement procedures for such services. Sprint submits that AT&T and Verizon's joint opposition is merely a rehashing of exhausted arguments, rather than a reasoned argument against reconsideration. Indeed, Verizon has

¹ See Sprint Corporation Petition for Reconsideration, ET Docket No. 00-258 (filed Feb. 24, 2003).

attempted to insert last-minute roadblocks in the form of “Emergency Petitions” and ill-considered “proposals” for MDS relocation in the past.²

AT&T and Verizon argue that reconsideration does not have a sound basis in law or policy. On the contrary, as both Sprint and the WCA have made clear, reconsideration is fully justified both legally and as a matter of policy. The Commission’s repossession of the 2150-2162 MHz band without offering incumbent licensees fully comparable frequencies and clear consideration for reimbursement costs undermines the integrity of the auction process.³

Verizon and AT&T assert that Sprint and other MDS licensees are attempting to gain a “windfall” by requesting that the Commission relocate MDS services to 1910-1916/1990-1996, claiming that they are trying to “trade-up from an unpaired to paired bands,” yet they fail to square their accusation with the fact that Sprint and others have clearly described the unique quality of the MDS channels at 2150-2162 MHz --that they can be used for stand-alone two-way services through use of time division duplex (TDD) technology-- and that to be truly comparable, replacement spectrum must be able to accommodate TDD. Throughout the course of this rulemaking proceeding, many bands and many interference scenarios were

² See, e.g., Verizon Emergency Petition to Defer Action on Applications *ET 00-258* (filed Mar. 28, 2001). Verizon, having had a plethora of opportunities and ample time to develop well-reasoned suggestions for MDS relocation, thrust out the suggestion of the long-decided 2500-2690 MHz band or the 2490-2500 MHz band as relocation candidates in its Reply Comments on the Third NPRM. It has since apparently recognized that 2490-2500 is an unworkable solution, as it fails to repeat that suggestion here. See *Reply Comments of Verizon Wireless*, ET Docket No. 00-258, at 7-8 (filed April 28, 2003).

³As WCA states in its comments on the 3rd NPRM, “Indeed, when reviewing the Commission’s oversight of that process, the D.C. Circuit “start[s] from the intuitive premise that an agency cannot, in fairness, radically change the terms of an auction after the fact,” and has confirmed that a “bidder in a government auction has a ‘right to a legally valid procurement process’; a party allegedly deprived of this right asserts a cognizable injury.” (footnotes omitted) See WCA Comments on Third NPRM at 38.

considered, but only the 1910-1916/1990-1996 MHz band could support the operations supported by 2150-2162 MHz. This band does not represent a windfall or a “trade up.” It represents a fair trade.

AT&T and Verizon venture at this late date and in the context of their opposition to rehash the proposal made by Verizon and rejected by the Commission in 2001, namely, that MDS be moved somewhere in the 2500-2690 MHz band.⁴ This proposal is not only moot, but also completely inapposite to the issue of reconsideration. Sprint sees no reason to burden the record with arguments as to why it is a completely unacceptable relocation option. Suffice it to say that, while AT&T and Verizon play lip service to the fact that “MDS operators vacating the 2150-2160[sic] MHz band are entitled to comparable replacement spectrum and reimbursement for legitimate relocation costs,” they offer no constructive suggestions as to comparable spectrum, and flatly warn that “Petitioners also should be aware that the obligation of new licensees to pay their relocation costs may actually be quite limited.”

AT&T and Verizon offer no reasoning for their threat, no useful suggestion as to relocation spectrum, and no sound argument supporting their opposition to the Petitions for Reconsideration. The simple facts remain that, after developing a full record on the relocation of MDS from 2150-2162 MHz and after reviewing several iterations of the MDS Industry Compromise, the Commission disregarded the comments, concerns, and reallocation proposals before it and reallocated the spectrum in its Second Report and Order without addressing the issues of replacement spectrum and cost reimbursement. This denied

⁴ Comments of Verizon Wireless, ET Docket No. 00-258, at 16 (filed Feb. 22, 2001), Reply Comments of Verizon Wireless, ET Docket No. 00-258, at 14 (filed Mar. 9, 2001).

licensees their rights to spectrum acquired at auction without a reasoned explanation. As such, the decision is contrary to sound policy and law and should be reversed.

Respectfully submitted,

Sprint Corporation

By _____/s/_____

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