

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

In the Matter of)
)
Amendment of Parts 1, 21, 73, 74 and 101 of)
the Commission’s Rules to Facilitate the) WT Docket No. 03-66
Provision of Fixed and Mobile Broadband)
Access, Educational and Other Advanced)
Services in the 2150-2162 and 2500-2690)
MHz Bands)
)

COMMENTS

W.A.T.C.H. TV Company (“W.A.T.C.H. TV”), a provider of multichannel video service and wireless broadband service over MDS/ITFS spectrum in Lima, OH and the surrounding area, hereby submits its comments in response to the Commission’s *Notice of Proposed Rulemaking* (“*NPRM*”) in the above-captioned proceeding.¹

By now W.A.T.C.H. TV’s story is well known to the Commission.² After nearly twelve years and well over \$20,000,000 of its own investment, W.A.T.C.H. TV has successfully transformed its operations from the 11-channel analog video-only service it launched in 1992 into a state-of-the-art network that utilizes all available MDS and ITFS spectrum to provide over 200 channels of digital video and audio programming and high-speed Internet access to more than 12,500 households throughout the Lima market. Because its services are available

¹ *Amendment of Parts 1, 21, 73, 74 and 101 of the Commission’s Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands*, 18 FCC Red 6722 (2003).

² See Letter from Thomas Knippen, Vice President and General Manager, W.A.T.C.H. TV Company, to John B. Muleta, Chief, Wireless Telecommunications Bureau, WT Docket No. 03-66 (July 29, 2003); Letter from Thomas Knippen, Vice President and General Manager, W.A.T.C.H. TV Company, to (continued on next page)

throughout its entire authorized service area, W.A.T.C.H TV's system is able to serve customers who cannot obtain access to competing services offered by incumbent cable MSOs and local exchange carriers.³ Moreover, even where such competing services are available, W.A.T.C.H TV's presence in the market imposes downward pressure on how those competing services are priced, as W.A.T.C.H. TV offers consumers a highly attractive alternative.

W.A.T.C.H. TV's success, however, will be for naught if the Commission's response to the *NPRM* is to effectively prevent W.A.T.C.H. TV from maintaining its existing services to consumers. Indeed, that result would be a cold irony for W.A.T.C.H. TV, since its system upgrades and expansion of service were initiated in direct response to previous Commission mandates for MDS/ITFS. That is, at a time when the Commission was promoting analog wireless cable service as a competitive alternative to monopoly cable providers, W.A.T.C.H. TV launched its analog wireless cable system (one of the first in the United States);⁴ when the Commission encouraged the deployment of digital technology to increase wireless cable's channel capacity, W.A.T.C.H. TV was one of the first commercial MDS/ITFS systems in the country to deploy digital wireless cable service;⁵ and when the Commission adopted rules to promote use of MDS/ITFS spectrum for high-speed Internet service, W.A.T.C.H. TV was one of the first wireless cable operators in the country to offer such service to its customers.⁶ Against

Marlene H. Dortch, Secretary, Federal Communications Commission, RM-10586 (filed Nov. 14, 2002)[“WTC Comments To Wireless Telecommunications Bureau”].

³ W.A.T.C.H. TV's service area encompasses rural communities in Western Ohio, including those in and around the cities of Lima, Wapakoneta, Celina, Ottawa, St. Mary's, Ada, Bluffton, Van Wert and Bellefontaine.

⁴ See *NPRM*, 18 FCC Rcd at 6730.

⁵ See *id.* at 6731.

⁶ See *id.*

this backdrop, it plainly would be inequitable for the Commission to now reverse field and nullify W.A.T.C.H. TV's efforts and multimillion dollar investment solely to promote a cellular paradigm for MDS/ITFS service.

Yet, reverse field and put W.A.T.C.H. TV out of business is exactly what the *NPRM* suggests the Commission might do. The *NPRM* is riddled with suggestions that the Commission intends to force the elimination of all high-power, high-site use of the 2500-2690 MHz band by some date-certain in the future, seeking comment on a variety of means to that end.⁷ To W.A.T.C.H. TV, the differences between the proposed timetables to a mandatory transition to cellular architecture are of no moment, since no matter when it occurs any mandatory transition to cellular architecture would sound the death knell for W.A.T.C.H. TV. Since the video and audio services distributed by W.A.T.C.H. TV to its widely-disbursed subscriber base cannot be distributed economically over cellularized facilities, adoption of any of the Commission's proposals would force W.A.T.C.H. TV to terminate its provision of video and audio programming to subscribers, stranding investment in millions of dollars of transmission and reception equipment and wreaking financial havoc on W.A.T.C.H. TV's owners.

The *NPRM*'s failure to address the plight of W.A.T.C.H. TV is particularly troubling given that the Commission is well-aware that any transition to a new bandplan that mandates cellular usage will have a devastating impact on W.A.T.C.H. TV and the handful of other companies that are similarly situated. Significantly, in the November 14, 2002 First Supplement that The Wireless Communications Association International Inc. ("WCA"), the National ITFS Association ("NIA"), and the Catholic Television Network ("CTN") filed in connection with

⁷ See *NPRM*, 18 FCC Rcd at 6764-5.

their October 7, 2002 proposal for revising the MDS/ITFS regulatory regime, the issue was specifically raised.⁸

In that filing, WCA, NIA and CTN called upon the Commission to ensure that its new MDS/ITFS rules exempt system operators from having to transition to whatever new MDS/ITFS bandplan is adopted if they were using more than seven MDS/ITFS channels for the transmission of digitally compressed video programming to subscribers as of October 7, 2002. The rationale for this provision was stated as follows:

In crafting [the proposed transition plan], WCA, NIA and CTN were strongly influenced by the fact that virtually all of the current MVPD systems could continue their current service offerings (and, in most cases, materially increase the number of program tracks offered to subscribers) by digitizing the seven 6 MHz channels that will be in the MBS following a transition – channels that can continue to operate on a high-power, high-site basis under the proposed new rules.

..

However, WCA, NIA and CTN recognize that a system that currently utilizes more than seven 6 MHz channels for the transmission of digitally compressed video programming does not have the option of just using MBS channels – to continue its current service offering requires more high-power, high-site channels than are allocated to the MBS. Because a few system operators have recently digitized their video services and have been marketing those services with some success (although perhaps not yet reaching the 5% “opt-out” benchmark proposed by WCA, NIA and CTN), WCA, NIA and CTN believe that special provisions are appropriate. Thus, they are proposing that any MVPD system that as of October 7, 2002 (the date the white paper was filed) was utilizing more than seven MDS/ITFS channels for the transmission of digitally compressed video programming to subscribers should be able to invoke the MVPD “opt-out” discussed in the white paper.⁹

⁸ “A Proposal for Revising the MDS and ITFS Regulatory Regime,” Wireless Communications Sass’s Int’l, Nat’l ITFS Sass’s and Catholic Television Network, RM-10586 (filed Oct. 7, 2002); “First Supplement to ‘A Proposal for Revising The MDS and ITFS Regulatory Regime,’” RM-10586 (filed Nov. 14, 2002) (“First Coalition Supplement”); “Second Supplement to ‘A Proposal For Revising The MDS and ITFS Regulatory Regime,’” RM-10586 (filed Feb. 7, 2003).

⁹ First Coalition Supplement at 4-5.

The language quoted above describes W.A.T.C.H. TV's situation perfectly. Unlike analog systems that can actually increase their channel capacity by digitizing the seven video channels that will remain available under the Coalition Proposal bandplan, W.A.T.C.H. TV's existing digital operations would suffer a 75% *loss* of video programming if limited to seven channels. The net result, obviously, is that W.A.T.C.H. TV's multichannel video service would no longer be competitive with that of its competitors, thus putting W.A.T.C.H. TV's entire business at risk of extinction. There is no legitimate public interest justification for the Commission to court that result.¹⁰ Not surprisingly, W.A.T.C.H. TV immediately advised the Commission of its support for the WCA, NIA and CTN proposal to permit digital service providers like W.A.T.C.H. TV to continue operating high-power, high-site facilities.¹¹

In sum, W.A.T.C.H. TV believes that the proposal by WCA, NIA and CTN is the most viable and efficient option for badly needed regulatory reform of the MDS/ITFS industry. By adopting that proposal, including the proposed treatment of incumbent video service providers, as soon as possible, the Commission will permit MDS/ITFS licensees to exercise additional flexibility, while at the same time assuring that existing digital systems such as that developed by W.A.T.C.H. TV in response to specific Commission initiatives, can continue to prosper. Chairman Powell has acknowledged that the Commission's rules "have shifted in their

¹⁰ The development of television service in rural areas has long been an important public policy consideration. Recently, for example, the LOCAL Television Loan Guarantee Board proposed rules and procedures under which it will issue up to \$1.25 billion in federal loan guarantees to those who seek to build and operate facilities that deliver local television service to rural or "unnerved" areas, including providers of multichannel video service. *See LOCAL Television Loan Guarantee Program*, 68 Fed. Reg. 48814 (Aug. 15, 2003). W.A.T.C.H. TV, of course, has been providing such service for years, and is merely asking that the Commission's new MDS/ITFS rules permit it to continue doing so without disruption.

¹¹ WTC Comments To Wireless Telecommunications Bureau at 2.

objectives” and that, “[d]espite the uncertainty caused by these regulatory shifts, many licensees have strived to provide innovative and quality services.”¹² The Commission must assure that those very licensees not be penalized as the Commission, once again, shifts its objectives for the 2.5 GHz band.

Respectfully submitted,

W.A.T.C.H. TV COMPANY

By: /s/ Thomas Knippen

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September 8, 2003

¹² Separate Statement of Chairman Michael K. Powell re: *Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands (RM-10586)* (Mar 13, 2003).

CERTIFICATE OF SERVICE

I, Karla E. Huffstickler, hereby certify that copies of the foregoing Comments have been served by hand this 8th day of September, 2003, on the following:

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