

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Amendment of Parts 1, 21, 73, 74 and 101 of)	WT Docket No. 03-66
the Commission's Rules to Facilitate the)	RM-10586
Provision of Fixed and Mobile Broadband)	
Access, Educational and Other Advanced)	
Services in the 2150-2162 and 2500-2690)	
MHz Bands)	
)	
Part 1 of the Commission's Rules - Further)	WT Docket No. 03-67
Competitive Bidding Procedures)	
)	
Amendment of Parts 21 and 74 to Enable)	MM Docket No. 97-217
Multipoint Distribution Service and the)	
Instructional Television Fixed Service)	
Amendment of Parts 21 and 74 to Engage in)	
Fixed Two-Way Transmissions)	
)	
Amendment of Parts 21 and 74)	WT Docket No. 02-68
of the Commission's Rules With Regard to)	RM-9718
Licensing in the Multipoint)	
Distribution Service and in the)	
Instructional Television Fixed Service for the)	
Gulf of Mexico)	

To: The Commission

COMMENTS OF PCIA, THE WIRELESS INFRASTRUCTURE ASSOCIATION

PCIA, the Wireless Infrastructure Association ("PCIA"), by its attorneys and pursuant to Section 1.415 of the Commission's Rules,¹ hereby files comments in response to the Notice of Proposed Rulemaking and Memorandum Opinion and Order ("NPRM"), FCC 03-56, released

¹ 47 C.F.R. § 1.415. All references to the Commission's Rules are cited at 47 C.F.R. §§ 0.1 *et seq.*

April 2, 2003.² Among the issues addressed in the NPRM is the method of transitioning to a new band plan.³ These comments address the manner in which the commercial operators of Multipoint Distribution Service (“MDS”) and Instruction Television Fixed Service (“ITFS”) spectrum are to share with each other the transitioning costs incurred by incumbent ITFS licensees. PCIA proposes the establishment of a cost-sharing clearinghouse to (1) facilitate the transition of ITFS licensees to the new band plan, resulting in rapid deployment of new services in the MDS/ITFS spectrum, (2) ensure systematic and equitable cost-sharing for the transitioning of ITFS licensees to the new band plan, and (3) minimize the Commission’s burden of resolving cost-sharing disputes among the commercial operators of MDS/ITFS spectrum.

I. PCIA

From its beginnings in land mobile radio to paging and messaging, and from personal communications services (“PCS”) to tower and antenna siting, PCIA has been instrumental in facilitating the emergence and growth of core wireless services. Since the inception of Commission procedures for relocating incumbent point-to-point microwave licensees in the frequency bands allocated for PCS, PCIA has operated a Microwave Clearinghouse to administer the Commission’s relocation cost-sharing plan. The PCIA Microwave Clearinghouse maintains all of the cost and payment records related to the relocation of each incumbent microwave link and determines the cost-sharing obligations of subsequent PCS licensees. The procedures used by PCIA’s Microwave Clearinghouse have worked extremely well, facilitating the rapid deployment of service by new PCS licensees.

² A notice summarizing the NPRM was published at 68 Fed. Reg. 34560, June 10, 2003.

³ NPRM at paras. 98-106 and Appendix C.

II. Cost-Sharing Procedures

The cost-sharing procedures for relocation of microwave incumbents are found in Sections 24.239 through 24.253 of the Commission's Rules. Pursuant to these procedures, the PCS licensees who arrange and pay for the relocation of a microwave incumbent are entitled to reimbursement from all of the other PCS licensees who later benefit from the relocation of the microwave incumbent.

In the NPRM at paras. 98-106 and Appendix C, the Commission seeks comment on the joint proposal of the Wireless Communications Association International ("WCA"), the National ITFS Association ("NIA") and the Catholic Television Network ("CTN") (collectively, the "Coalition") as well as on alternative proposals to transition the MDS/ITFS spectrum to a new band plan. Specifically, the Coalition recommends a market-by-market transition process whereby the operators in each market continue to operate pursuant to existing rules until an operator (the "Proponent") initiates the transition process. The Coalition proposes that the Proponent fund conversion costs for ITFS operators, but that MDS operators pay their own costs. In addition, those offering commercial service on MDS and ITFS channels would be required to reimburse the Proponent for their *pro rata* share of the cost of transitioning the facilities that they use and the cost of transitioning facilities associated with any overlapping transition impact area.

The Coalition suggests that the reimbursement rules be modeled after the PCS reimbursement rules found in Sections 24.239 through 24.253 of the FCC's rules. However, the Coalition argues that there is no need for a clearinghouse to administer the cost-sharing because they do not see the MMDS/ITFS rebanding to be as complicated as PCS microwave relocation. Instead, they argue that parties to any reimbursement dispute should utilize alternative dispute

resolution mechanisms before bringing the dispute to the Commission for resolution.⁴ In support of its position, the Coalition mentions that it does not see problems to have arisen in the PCS microwave relocation reimbursement process.⁵

Contrary to the Coalition's position, the fact that there were few disputes involving cost-sharing of band-clearing for PCS speaks to the need for a transitioning cost-sharing clearinghouse for MDS/ITFS. It was precisely because the PCIA Microwave Clearinghouse did its job well, that there were few disputes involving cost-sharing. By determining cost sharing amounts and successfully resolving most disputes within the Clearinghouse, very few disputes were elevated to the Commission for resolution. On the other hand, were there to be no clearinghouse to manage the MDS/ITFS transition, the Commission could expect to be in a position to mediate even the simple disputes, thereby slowing and complicating the transitioning process.

Moreover, there are complexities associated with the transitioning process. For example, due to the spacing between certain markets, overlapping areas of potential interference would cause a need for a Proponent to transition nearby markets not served by the Proponent. In addition, a number of markets include multiple commercial MDS/ITFS operators, and each commercial MDS/ITFS operator has a different amount of spectrum. These two factors combine to result in a complex reimbursement determination, one that would be best made by an independent neutral party that would be capable of resolving most disputes. In short there is a need for a cost-sharing clearinghouse.

⁴ Coalition Proposal for Revising the MDS and ITFS Regulatory Regime, Appendix B at 28-29, October 7, 2002.

⁵ Coalition Reply Comments at 25 n.68, November 29, 2002.

Therefore, PCIA proposes that the Commission establish cost-sharing procedures for MDS/ITFS transitioning similar to the cost-sharing procedures established by the Commission for PCS that are found in Sections 24.239 through 24.253 of the Commission's Rules. In this regard, just as the Commission saw the benefits and need to establish a clearinghouse to administer a complicated (but fair and necessary) cost-sharing formula used for PCS licensees, the benefits and need for a clearinghouse are equally applicable transitioning MDS/ITFS. The PCIA Microwave Clearinghouse fairly administered the cost sharing formula for PCS licensees, and there were very few disputes among licensees caused by the cost-sharing procedures. As a result, the PCS industry was able to initiate service on a timely basis and provide much needed competition and new innovation for consumers of mobile wireless services.

III. Conclusion

In view of the foregoing, PCIA requests that the Commission provide for the establishment of cost-sharing clearinghouse for MDS/ITFS transitioning similar to PCIA's Microwave Clearinghouse.

Respectfully submitted,

PCIA, the Wireless Infrastructure Association

By: _____/s/_____

Catherine Wang
Eliot J. Greenwald

Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W.
Suite 300
Washington, D. C. 20007

(202) 424-7500

September 8, 2003

Its Attorneys