

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

To: The Commission

**COMMENTS OF OKLAHOMA WESTERN TELEPHONE COMPANY, INC.**

**Introduction**

The Oklahoma Western Telephone Company, Inc. ("OWTC"),<sup>1</sup> by its attorneys, hereby respectfully submits these Comments in response to the Federal Communications

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<sup>1</sup> OWTC is a small, rural local exchange carrier that OWTC provides "wireless cable" services to approximately 270 customers in one combined system associated with four Multipoint Distribution Service (MDS) call signs that serves the population in and around Clayton, Oklahoma. OWTC has been a first-rate steward of the MDS spectrum under its control since it received its first MDS license in 1990 and it has invested almost one million dollars to

Commission's (FCC or Commission) Notice of Proposed Rule Making (NPRM).<sup>2</sup> The Commission stated that the purpose of the NPRM is to "facilitate the provision of fixed and mobile broadband access, educational and other advanced wireless services in the 2500-2690 MHz bands (the MMDS/ITFS band). Additionally, the Commission also seeks to foster the development of innovative service offerings to consumers as well as educational, medical and other institutions, simplify the licensing process and delete obsolete and unnecessary regulatory burdens."<sup>3</sup>

OWTC praises the Commission for releasing its comprehensive NPRM related to this valuable spectrum. There is 190 MHz of contiguous spectrum allocated in this band and it is time for MDS and ITFS licensees to maximize the delivery of both traditional and innovative services through this spectrum. OWTC is pleased to participate in this proceeding and believes that the MDS and ITFS licensees are worthy of this important allocation of spectrum.

### **Band Reconfiguration**

Currently, there are four kinds of basic service offerings in the 2500-2690 MHz band: (1) downstream analog video; (2) downstream digital video; (3) downstream digital data; and (4) downstream/upstream digital data.

OWTC has four MDS licenses in band channel designations (E1, E4, H1, H2 and H3) that are interleaved with the ITFS licenses. OWTC understands that the current channel design

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construct, improve and maintain its facilities to establish a fully operational MDS system. OWTC's MDS market is not served by a traditional cable television franchise.

<sup>2</sup> *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*, Notice of Proposed Rulemaking (NPRM), WT Docket No. 02-68; 03-66; 03-67; MM Docket No. 97-217; FCC 03-56 (released April 2, 2003).

<sup>3</sup> FCC News Release, pg. 1 (released March 13, 2003.)

is not optimal for digital two-way services. If the Commission is determined to reconfigure the band, then OWTC believes the best way to implement this change is to separate low power uses of the spectrum from high power uses in order to promote the most efficient use of the spectrum by consolidating channels into contiguous blocks with a guard band in between. It appears appropriate that the Commission develop new technical rules for each spectrum segment that are clear and unambiguous.

OWTC is opposed to an across-the-board limit on signal strength since it would leave it to the licensees to work out any acquisitions or channel trades or voluntary efforts to consolidate channels. OWTC is concerned that such an environment would favor the largest licensees that have greater resources and these larger licensees may be tempted to “greenmail” smaller licensees.

Since there is no cable television franchise in OWTC’s market area and since OWTC is the only source of over-the-air video, OWTC intends to continue providing high power video services in order to serve the public interest. As demand for two-way broadband services becomes readily evident, OWTC is willing to explore providing these services for its customers. Note, however, OWTC serves a very rural and economically challenged market area.

#### **Conversion of Site-By-Site Incumbent MDS Licenses to Geographic Service Areas (GSAs)**

Incumbent MDS providers that obtained their licenses before the 1996 MDS Basic Trading Area (BTA) auction have 35-mile Protected Service Areas (PSAs) around their main stations. The FCC believes that geographic area licensing “poses significant advantages over site-based licensing because of the greater operational flexibility it gives licensees and the

greater ease of administration for consumers, licensees and regulators. For example, geographic area licensing reduces administrative burdens and operating costs by allowing licensees to modify, move and add to their facilities within specified geographic areas without prior Commission approval.”<sup>4</sup>

OWTC appreciates the reduced administrative costs and increased licensee autonomy associated with GSAs. If the FCC decides to adopt a GSA approach, it must balance the needs of the small, medium and large MDS licensees. In order for smaller MDS licensees, like OWTC, to stay in business, the Commission should develop a minimum-size GSA area and then allow licensees to aggregate multiple service areas on a regional and/or a national basis. Under this approach, smaller entities with local or regional business plans and no interest in providing large-area service would not be discriminated against. Therefore, OWTC, as a small, rural licensee, prefers MDS licensing based on small geographic service areas.

OWTC believes that MDS licensees should be allowed to continue to partition and disaggregate the service areas. OWTC looks forward to the release of the Commission’s secondary markets report and order and believes that it should apply to MDS licenses as well.

In order to prevent the unjustified loss of an MDS license, the Commission should not eliminate the requirement that a BTA authorization holder must file a long form application to operate a transmitter if an incumbent site-based MDS license is forfeited. It seems to be an unduly harsh process that the right to operate an MDS license would automatically revert to the licensee that holds the BTA license if the site-based license is forfeited. Indeed, there are circumstances where the BTA holder is in dire financial condition and may no longer be qualified to hold an FCC license. There must be a rational process to ensure that such a

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<sup>4</sup> NPRM at para. 62 (citations omitted.)

license is actually forfeited before the license is readily transferred to the BTA licensee. One other complication is if the Commission adopts a GSA approach, how with the BTAs be matched up with the GSAs? Again, the Commission should be clear and unambiguous in transitioning from the BTAs to the GSAs.

### **Technical Proposals to Enhance the MDS Service**

OWTC supports the proposal to eliminate the requirement that MDS licensees obtain a separate authorization to engage in mobile operations. Instead, the Commission should authorize mobile operations via blanket licensing. In order to manage maximum antenna power limits and height limits for both response stations and base/main stations, the Commission should adopt a channel-pairing framework in order to standardize the channel separation for upstream or downstream channels (like satellite operations.)

Also, it is critical that the Commission adopt technical rules that do not favor one specific technology over another. In other words, the Commission should only approve technical rules that are technology-agnostic. MDS equipment costs are currently higher than other wireless services and technology-specific rules would hamper innovative efforts to provide new and unique MDS equipment.

If the Commission allows unlicensed operation on a secondary, non-interference basis for new unlicensed services (like wireless data networks), the Commission should allocate additional resources so that it can ensure that it can identify and investigate the interference of MDS services and then quickly enforce its anti-interference rules.

### **Simplification and Streamlining of Licensing Processes**

Since regulation of the MDS service was transferred from the Mass Media Bureau to the Wireless Telecommunications Bureau (and from BLS to ULS), it makes sense for the Commission to consolidate the MDS procedural rules into Part 1 like the majority of wireless services. This is likely to cause less confusion among licensees as long as the procedural rules are clear and unambiguous.

OWTC supports the Commission's proposal to provide MDS licensees with a 90-day pre-expiration notice for renewal applications in order to avoid an inadvertent lapse of a license and the subsequent reinstatement effort. The pre-expiration notice is essential since the Commission proposes to eliminate the process of applying for reinstatement of the license if the expiration date passes without a proper renewal being filed. Every effort should be made by the Commission to ensure that a licensee receives the pre-expiration notice since the routine reinstatement process is being eliminated. However, there should remain some procedural protections for such licensees. Before a license is officially forfeited, a licensee that argues that it never received the pre-expiration notice should be able to contact the Commission and make its case. Such due process is inherently fair and the Commission should maintain some appropriate process.

### **New Application Filing and Processing Procedures**

OWTC supports the Commission's proposal to license individual transmitters on a geographic area license basis rather than on an individual license basis. This flexibility will reduce the administrative costs for both licensees and the Commission.

OWTC also approves of a consolidation of the MDS and ITFS application procedures. By filing applications electronically through ULS, MDS and ITFS applicants will be able in

benefit from the accuracy and reliability of licensing information provided in the ULS system. FCC forms that serve the same purpose for various, unique services should be consolidated. However, the Commission should implement a 6-month transition period in order for licensees to fully understand any new forms or consolidated forms.

**Consolidation of All Service-specific Rules for MDS and ITFS under Part 27 (Wireless Communications Services) and Part 101 (Fixed Microwave Services)**

The MDS and ITFS service rules are contained in three rules parts: Part 21 contains the MDS rules and Parts 73 and 74 contain the ITFS rules. Despite the fact that they provide similar services, the FCC's rules treat MDS and ITFS licensees differently. The FCC believes that "regulatory parity will lead to efficiency in this band and spur the development of new and improved services for the public. Additionally, we believe that consolidating the MDS and ITFS service specific rules into one rule part will reduce confusion and provide a single reference point for these similar services."<sup>5</sup> Therefore, the FCC is proposing to consolidate the MDS and ITFS rules into Part 101.

OWTC prefers to keep the service rules for MDS, ITFS and other fixed wireless services separate. While consolidation of procedural rules under Wireless Telecommunications Bureau control makes sense and could lead to a streamlining of application and other procedures, the service rules for each unique service must be clear and unambiguous in order to prevent licensee and market confusion. An alternative approach would be to create consolidated service rules for similar aspects of the respective unique services, but then have distinct service rule subparts when the historical service rules diverge from each other for each unique service.

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<sup>5</sup> Id at para. 160.

## **Broadband Policy Goals and Objectives**

OWTC applauds the Commission's efforts to promote the development of high-speed data networks. However, the incumbent high-power video services traditionally associated with MDS should not be abandoned since they do serve an important market segment—those rural areas without a cable television franchise. OWTC does foresee the use of MDS spectrum, under the proper business and regulatory conditions, being utilized to provide broadband services (and other ancillary services) when traditional broadband service providers fail to enter the market area. The main point here is that the traditional high-powered video services should not be sacrificed for ambiguous promises of providing services that may need more time before they are ubiquitously desired by the masses. OWTC serves a sparsely populated and economically challenged area of the country where demand for broadband services pales when compared to the need for over-the-air video services.

## **Two-Sided Auctions**

The Commission's concept of two-sided auctions is very intriguing to OWTC and it should promote the best use of available or unencumbered MDS spectrum. However, the Commission must ensure that it will participate in any related dispute resolution process or it very well may create opportunities for licensees to engage in abusive practices such as "greenmail," which would be unfortunate for all parties involved.

**Conclusion**

For the foregoing reasons, we urge the Commission to consider OWTC's experiences and observations described in these Comments.

Respectfully submitted,

**OKLAHOMA WESTERN TELEPHONE  
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