

**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 |) | WT Docket No. 03-66 |
| Facilitate the Provision of Fixed and Mobile |) | RM-10586 |
| Broadband Access, Educational and Other |) | |
| Advanced Services in the 2150-2162 and |) | |
| 2500-2690 MHz Bands |) | |
| |) | |
| Amendment of Parts 21 and 74 to Enable |) | |
| Multipoint Distribution Service and the |) | MM Docket No. 97-217 |
| Instructional Television Fixed Service |) | |
| to Engage In Fixed Two-Way |) | |
| Transmissions |) | |

To: The Commission

**JOINT COMMENTS OF ADAMS TELCOM, INC., CENTRAL TEXAS
COMMUNICATIONS, INC. & LEACO RURAL TELEPHONE COOPERATIVE, INC.**

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SUMMARY

The Rural Commenters urge the Federal Communications Commission to protect the operation of existing video systems currently providing service to rural and otherwise unserved areas utilizing MDS and ITFS licenses during the transition to any new band plan or regulatory regime. Such rural MDS and ITFS systems provide much-needed service to rural subscribers, many of whom would not otherwise have access to local over-the-air network broadcasts, cable news outlets, and educational and public interest programming without “wireless cable” service, and the Commission should not force rural licensees to abandon these systems because of the adoption of a new band plan or a new set of service rules. In order to protect rural video subscribers, the Commission should not require mandatory transition to a new band plan prior to December 31, 2012, a date by which all current incumbent MDS, ITFS and MDS Basic Trading Area authorizations will have expired and will have been considered for renewal by the Commission. The Rural Commenters also support the lifting of the educational eligibility restrictions for holding ITFS licenses. Lifting the restrictions will allow rural broadband and video providers to utilize valuable spectrum without the substantial transaction costs associated with spectrum leasing and compliance with outdated educational mandates that make little sense in the digital age.

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COMMUNICATIONS, INC. & LEACO RURAL TELEPHONE COOPERATIVE, INC.**

Adams Telcom, Inc. ("Adams"), Central Texas Communications, Inc. ("Central Texas") and Leaco Rural Telephone Cooperative, Inc. ("Leaco") (collectively, the "Rural Commenters"), by their attorneys, hereby respectfully submit comments in response to the *Notice of Proposed Rulemaking*¹ in the above-captioned proceeding. While the Rural Commenters generally support the Federal Communications Commission's ("FCC" or "Commission") efforts in this proceeding to help revitalize the Multipoint Distribution Service ("MDS") and Instructional Television Fixed Service ("ITFS"), the Rural Commenters urge the Commission not to adopt any new rules, procedures or policies that may jeopardize the operation of, or cause harmful interference to,

¹ *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 1250-2162 and 2500-2690 MHz Bands*, Notice of Proposed Rulemaking, WT Docket No. 03-66, *rel.* April 2, 2003 ("*Notice*").

existing video systems currently providing service to rural and otherwise unserved areas through the use of MDS and ITFS licenses in the 2.1 and 2.5 GHz spectrum bands. Such systems provide much-needed service to rural subscribers, many of whom would not otherwise have access to local over-the-air network broadcasts, cable news outlets, and educational and public interest programming without “wireless cable” service, and the Commission should not force rural licensees to abandon these systems because of the adoption of a new band plan or a new set of service rules. In order to protect rural video subscribers, the Commission should not require mandatory transition to a new band plan prior to December 31, 2012, a date by which all current incumbent MDS, ITFS and MDS Basic Trading Area (“BTA”) authorizations will have expired and will have been considered for renewal by the Commission. The Rural Commenters also support the lifting of the educational eligibility restrictions placed on ITFS licenses. Lifting the restrictions will allow rural broadband and video providers to utilize valuable spectrum without the substantial transaction costs associated with spectrum leasing and compliance with outdated educational mandates that make little sense in the digital age.

I. Statement of Interest

The Rural Commenters, rural telephone cooperatives or subsidiaries thereof, provide video services to rural portions of Illinois, Texas and New Mexico through licensed MDS and leased ITFS channels. Adams, a wholly-owned subsidiary of Adams Telephone Cooperative, Inc., leases ITFS channels in the areas surrounding Quincy, Illinois and provides video services to more than 800 rural customers and to rural schools. Adams is currently developing plans to deploy broadband services utilizing these leased channels. Leaco, a rural telephone cooperative that serves remote rural regions of eastern New Mexico and western Texas, is the MDS authorization-holder of the Hobbs, New Mexico BTA and leases ITFS capacity from area schools in and around Hobbs, New Mexico and Seminole, Texas. Through its “wireless cable”

system, Leaco currently provides service to approximately 2,450 residential, business and educational customers. Central Texas, a subsidiary of Central Texas Telephone Cooperative, Inc. is the licensee of the Brownwood, Texas and San Angelo, Texas BTAs and holds incumbent MDS licenses and leases ITFS channels in rural San Saba, Lohn and Goldthwaite, Texas. Central Texas currently provides video and broadband services to more than 2,700 subscribers in rural Texas. The majority of the Rural Commenters' subscribers would not be able to receive local over-the-air network broadcasts, including local news and weather information, without the Rural Commenters' provision of these video services through MDS and ITFS licenses.

II. Argument

A. The FCC Should Adopt a Transition Plan that Protects Rural Wireless Video Services.

In the *Notice*, the Commission seeks comment on the establishment of a new MDS and ITFS band plan, and on possible mechanisms by which existing licensees could transition to a new band plan, if adopted. The Commission also seeks comment on a number of rule changes designed to streamline licensing, construction, operation and assignment of MDS and ITFS stations. The Rural Commenters generally support an overhaul of out-dated MDS and ITFS service rules to help facilitate the rollout of low-power broadband services and acknowledge the need for the establishment of a new MDS and ITFS band plan. The Rural Commenters, however, urge the Commission to refrain from imposing a transition plan to a new regulatory regime which would, in the near-term, effectively eliminate the transmission of video services via MDS and ITFS in rural and underseved areas. Specifically, the FCC should not require MDS and ITFS licensees that are currently providing video services to transition to a new band plan or to a new regulatory regime that would require a substantial reduction of their high-powered

video capacity prior to December 31, 2012, the end of existing MDS and ITFS license terms.² A rapid transition to any band plan that substantially reduces the number of available analog video channels for “wireless cable” operators who are currently providing service, would unduly impact rural subscribers who receive their video through wireless cable. Although it is clear from the current state of the MDS industry³ that in major urban markets, the future success of the MDS and ITFS bands depends on the successful deployment of broadband services, in rural areas, MDS and ITFS still play an important role in the delivery of multichannel video services.

To ensure that the transition to a new band plan or service rules does not adversely impact the provision of rural video services, the Rural Commenters support the three-phase transition process set out in the *Notice*. The process includes a voluntary negotiation period, a mandatory negotiation period and mandatory relocation. Such mandatory relocation should not occur prior to the expiration of MDS and ITFS licenses in 2012.

- i. MDS and ITFS licenses are ideally suited for the provision of video services in rural markets.*

The Rural Commenters have been successful in their delivery of video services utilizing the 2.1 and 2.5 GHz MDS and ITFS bands because of technological and financial factors unique to rural and underserved areas. The use of wireless technology remains the only affordable way for rural licensees to provide multichannel video services to businesses and residences in remote and underserved areas. Although an analog wireless cable system has a significantly limited

² While most MDS BTA authorization holders’ license terms expire in 2008, the FCC recently renewed the majority of incumbent MDS and ITFS licenses in 2001. To create a uniform transition process that is fair and equitable to all existing MDS and ITFS licensees, the Commission should refrain from imposing a mandatory transition to a new band plan or new service rules until the existing MDS and ITFS license terms have expired in 2012.

³ The FCC’s 2002 Video Competition Report estimated that there are approximately 440,000 MDS and ITFS subscribers (down from 700,000 in 2001), most of which are receiving only broadband services, nationwide. *See*, In the Matter of Annual Assessment of the Status of Competition in the Market for Delivery of Video Programming, Ninth Annual Report, MB Docket No. 02-145, *rel.* December 31, 2002.

channel capacity when compared to that of a traditional wired cable system, the cost of deploying wired cable systems to the Rural Commenters' existing wireless cable customers is still extremely prohibitive.

Additionally, when compared to other wireless services, the propagation characteristics of the MDS and ITFS bands make them ideally suited for the delivery of video services in rural areas. MDS and ITFS signals can extend up to 50 miles from a single high-powered transmitter, compared to a 1 or 2 mile range for similar fixed wireless services such as Local Multipoint Distribution Service (LMDS) and the 39 GHz Service. Furthermore, licenses for such "substitute" wireless services are very difficult to acquire at auction or in the secondary market. The build-out costs and deployment of such services, which normally are in spectrum bands higher than 2.5 GHz, also serve as an obstacle in a rural environment.⁴ For these reasons, the Rural Commenters' wireless cable systems, through licensed MDS and leased ITFS licenses, remain the Rural Commenters' only viable option for providing critical over-the-air broadcasts, news, weather and educational information to businesses, residences and educational institutions in their rural service areas. Absent wireless cable systems, the Rural Commenters' customers would not otherwise be able to receive such local broadcasts from cable or satellite systems.

- ii. *The Commission's three-phase transition process is the best method to ensure that rural video providers are adequately protected from an immediate mandatory transition.*

In the *Notice*, the Commission states that "an important issue relating to the adoption of any new band plan is the mechanism to use to transition existing licensees to a new band plan."⁵ Specifically, in the *Notice*, the Commission proposes four approaches to transition. Only the

⁴ The cost of wireless equipment for use in higher frequency bands makes deployment of such service extremely difficult in rural markets. The Rural Commenters have found that the higher the frequency band, the more expensive the equipment.

⁵ *Notice* at 98.

second proposed approach, a three-phase transition process consisting of voluntary negotiation, mandatory negotiation and mandatory conversion, would adequately protect the interests of rural video and broadband providers. Under this second approach, most rural video providers would likely never be forced to migrate to a new band plan and to forfeit high-power video capacity because their existing high power operations transmit from remote areas and would cause little, if any, harmful interference to adjacent low-power broadband providers. Additionally, the implementation of a three-phase transition plan would give larger licensees in major markets the ability to require high-powered operations to cease at a date certain, provided that such high-powered operations were shown to cause harmful interference to new low power broadband services, or to provide compensation to such licensees to transition prior to the mandatory conversion period.⁶

The Rural Commenters' strongly oppose the transition plan proposed by the Wireless Communications Association, the National ITFS Association and the Catholic Television Network (collectively, the "Coalition") in their October 7, 2002 White Paper.⁷ Under the Coalition plan, "neighboring" licensees up to 150 miles away could force the Rural Commenters and other rural wireless video providers into a new band plan at any time, without any compensation to affected transitioning MDS licensees. Such forced transition with no compensation could slash the number of usable video channels from 33 (thirteen licensed and leased MDS channels and 20 leased ITFS channels) to seven under the Coalition's proposed band plan and would effectively end the provision of meaningful wireless cable services to rural

⁶ As part of the three-phase transition process, the Rural Commenters also support the adoption of more unorthodox transition facilitators, including the use of a two-sided auction through which the industry could, on its own, expedite the transition process to a new band plan and regulatory regime.

⁷ "A PROPOSAL FOR REVISING THE MDS AND ITFS REGULATORY REGIME," WHITE PAPER, prepared by WCA, The National ITFS Association and the Catholic Television Network (October 7, 2002)("White Paper").

areas. In fact, as the Rural Commenters argued in comments filed on November 14, 2002 addressing the Coalition's proposal, if adopted without modification, such a proposal would likely sound the death knell for most rural wireless cable operators.⁸

Over the past decade, the MDS and ITFS industry has been able to change and adapt, and the ability of licensees to strike their own deals, rather than to be compelled to comply with a new band plan at the whim of major licensees, would best fit transition in these struggling services. The implementation of the three-phase transition process, a process already proven to be successful for the relocation of fixed microwave services licensees by Personal Communications Service licensees, provides an equitable balance between the interests of larger carriers in urban areas and those of rural video providers that provide much-needed services to schools, businesses and residents in otherwise unserved areas through MDS and ITFS licenses.

B. The Commission Should Lift Restrictions on Eligibility to Hold ITFS Licenses.

The Rural Commenters also ask that the Commission lift the eligibility restrictions placed on holding ITFS licenses and allow commercial operators to immediately acquire and operate such licenses, should ITFS licensees be willing to sell. Currently, only accredited educational institutions, non-profit organizations and governmental organizations engaged in formal education or instruction may hold ITFS licenses.⁹ Typically, however, commercial operators lease excess capacity from ITFS licensees in and around their service areas. The vast majority of these ITFS licensees are rural high schools and junior high schools that have neither the resources, the expertise, nor the desire to utilize their licenses without a commercial partner. This "silent majority" of ITFS licensees receive minimal annual payments from their commercial

⁸ See, Comments of Leaco Rural Telephone Cooperative, Central Texas Communications, Inc. and Adams Telcom, Inc., *In the Matter of A Proposal for Revising the MDS and ITFS Regulatory Regime*, DA 02-2732.

⁹ 47 C.F.R. §74.932.

lessees, and in return, give up wholesale use of this valuable spectrum almost exclusively for commercial purposes.

Throughout the changing regulatory landscape of ITFS over the past 10 years, the “instructional” component of the service has gradually faded away, leaving little more than the retransmission of The Learning Channel and The Discovery Channel to local schools to satisfy the Commission’s educational mandate.¹⁰ As the MDS and ITFS bands shift from a fixed video application to a mobile voice and data service, the utilization of ITFS channels for educational purposes has become more suspect, with the educational requirement being met largely in form only. While the Rural Commenters, through their lease agreements, provide educational channels, televisions, and receive equipment to their ITFS lessors and continue to reserve airtime for exclusive school use (in compliance with the FCC rules), these educational institutions largely view this overly-burdensome regulatory regime as confusing, costly, inefficient and an unnecessary regulatory hurdle to providing operators with access to key spectrum.

As the FCC, through this proceeding, prepares to take radical steps to revitalize the MDS and ITFS spectrum bands by streamlining regulation and transitioning to a modified band plan to facilitate the deployment of low-power, cellularized services, the Commission should recognize that the elimination of the ITFS educational eligibility requirement is vital to realizing that goal. The requirement makes little sense in a low-power, mobile, cellularized environment. Its elimination will finally allow market forces to take hold in the band and will eliminate the needless paperwork and regulatory burdens associated with the wholesale leasing of ITFS spectrum. Elimination of the eligibility requirement will also help further three of FCC Chairman Powell’s spectrum policy goals, including promoting more efficient use of the spectrum, shifting from a “command and control” model of regulation to a more market-based

¹⁰ See, Letter to Dwayne W. Ryan, Director of Broadcasting from Clay Pendarvis regarding ITFS stations WLX-993 and WNC-300, *rel.* May 31, 2000.

approach, and fostering innovation in the ITFS band, and is squarely in line with the recommendations made by the FCC's Spectrum Policy Task Force.¹¹ Since the FCC dramatically expanded the rights of lessees of ITFS channels several years ago, the market has begun to drive real development in the band. By lifting the remaining educational restrictions the Commission will open the floodgates to allow real market forces to finally fully develop the ITFS band to its maximum potential.

Finally, while the entire wireless industry would benefit from the lifting of the ITFS eligibility requirement, the greatest benefit of such action would undoubtedly be bestowed on to the rural wireless community, where affordable and usable spectrum is extremely scarce and where demand for advanced broadband and video services is at an all-time high. The Rural Commenters, as rural wireless providers, are ideally-suited to utilize such ITFS spectrum without the restrictions that currently exist, to provide fixed and mobile broadband services, as well as video services, to their rural service areas.¹² By lifting all educational restrictions on ITFS licenses and by allowing commercial operators to acquire and utilize them as market forces demand, rural operators will have additional spectrum and resources to continue to provide critical services to rural homes, businesses, schools and public safety facilities.

III. Conclusion

The Rural Commenters applaud the Commission's far-reaching proposals in the *Notice* and the FCC's efforts to revitalize the struggling MDS and ITFS services. However, the Rural Commenters urge the Commission not to take any action which would eliminate the provision of critical video services to rural and unserved areas. The Rural Commenters respectfully request

¹¹ FCC Chairman Michael K. Powell Outlines Critical Elements of Future Spectrum Policy, FCC News Release, August 9, 2002.

¹² Should the Commission lift the ITFS eligibility restrictions and commence an auction of currently unallocated ITFS licenses, the Rural Commenters request that such licenses be issued for geographic service areas that are no larger than Basic Trading Areas.

that the Commission implement a three-phase transition process to a new band plan with mandatory transition not prior to the expiration of MDS and ITFS license terms in 2012. The Rural Commenters also request that the FCC eliminate the ITFS educational eligibility restrictions to allow market forces to foster growth in the band without encumbrance. While the Rural Commenters agree that the future of MDS and ITFS is in fixed and mobile broadband voice and data services, it is too early for the Commission to abandon video applications in this band, especially the provision of critical video services in rural areas.

Respectfully submitted,

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