

VIRGINIA COMMUNICATIONS, INC.

7621 E. Gray Rd., Suite B1
Scottsdale, AZ 85260
(480) 596-8283

April 8, 2003

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street S.W.
Washington, DC 20554

Re: WT Docket number 03-66, RM-10586
Notice of Proposed Rule Making
Comments

Dear Ms. Dortch:

Virginia Communications, Inc. ("VCI") hereby submits comments, regarding the amendment of the Commission's rules contemplated under the above-referenced docket.

Introduction

VCI has been an active MDS licensee for many years. During the late 1980s and early 1990s, VCI's principals launched one of the most successful wireless cable systems in the United States, operating as SuperChannels of Las Vegas, Inc. VCI was the successful bidder in thirteen BTA auctions: Athens, OH; Chillicothe, OH; Portsmouth, OH; Clarksville, TN-Hopkinsville, KY; Cedar Rapids, IA; Davenport, IA-Moline, IL; Iowa City, IA; Waterloo-Cedar Falls, IA; Altoona, PA; Olean, NY-Bradford, PA; Erie, PA; Huntington, WV; and Prescott, AZ. VCI's choice of markets was a function of geography, size, population, topography and the extant or likely penetration of DSL or cable modem services. The service regions have decidedly small-market and rural area profiles. 30% of the BTAs are in the lower third of all BTAs in terms of population. Of the 48 counties comprised by these BTAs, fully two-thirds lie outside the top 1,000 counties nationwide in terms of population, and nearly half rank below the largest 1,500 counties.

Today, VCI's Prescott, AZ system is the largest Internet Service Provider in northern Arizona, the fastest growing ISP in the area and one of the largest privately-held providers of high-speed wireless Internet services in the United States. VCI's customer base comprises residents and businesses of Prescott and its rural environs, including educational and municipal facilities. The Company recently entered into two contracts to provide broadband services on nearby Native American reservations. In just three years, VCI has invested over \$3M to establish its current level of service and continues large monthly investments to expand infrastructure, warranted by a large backlog of new service orders. Further infrastructure expansion, requiring the modification of MDS and ITFS stations in the market, is necessary to meet this demand. In addition, VCI's operation in Prescott contributes substantially to the local economy, employing 30 people with an annual payroll of nearly \$900,000.

Not surprisingly, the FCC has cited VCI's Prescott service as illustrative of the Commission's vision of universal access to high-speed broadband capability. In the *Interim Report on 3G*, the Commission lauded VCI for service that "encompasses approximately one third of a rural region surrounding Prescott that has no cable or DSL service and, in some cases, no landline telephone service."

As VCI has continued to develop the Prescott market, it has also invested substantial resources in preparing for timed roll-outs in its other BTAs. In any given market, the initial planning stages involve complex network design and engineering, the identification and acquisition of transmit sites and cell locations, zoning approvals and other permits, marketing studies, and the actual preparation and filing of the FCC applications to secure specific channel authorizations for two-way capability – the final technical step in preparing a market for initial testing and subsequent launch. VCI has already invested hundreds of thousands of dollars in engineering, equipment and other capital preparations to serve BTAs other than Prescott. VCI plans to construct the two-way systems in the other markets at a rate of approximately one every 3-4 months. In all of these markets, there are extensive urban and rural areas where alternative broadband services are either non-existent or of limited availability. As a result of

its Prescott operation, some 3,000 individuals have access to high-speed broadband service, most of which are enjoying this benefit for the first time. As a result of deployments in its other BTAs, VCI expects to provide previously unavailable broadband services to at least 75,000 homes and businesses. VCI is taking seriously the challenge to bring broadband services to these areas, as has been the Commission's desire.

Specific Comments on NPRM:

As the Commission states in Paragraph 1 of the NPRM, "the Commission seeks to promote competition, innovation and investment in wireless broadband services, and to promote educational services. 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." VCI is a company that has successfully and profitably provided broadband services to both urban and rural customers, working within the existing MMDS and ITFS rules and band structure. As such, it is our concern that any changes to these rules and band structure be carefully thought out, so as to not penalize operators who have already invested millions of dollars in deploying services in reliance upon the Commission's existing rules and the protections proffered by the Commission to licensed spectrum holders.

It is our view that some of the proposed changes in the MMDS/ITFS band structure, while serving to facilitate the introduction of low powered "next generation" technologies, may carry a burdensome transition cost to operator/licensees who have already deployed services on a significant scale. We ask that the Commission consider these issues when promulgating rules concerning transition to a new band plan.

Specifically, VCI is opposed to the establishment of a timetable for conversion of the entire 2500-2690 MHz band to low-power operations, as mentioned in Paragraph 46 of the NPRM. VCI contends that any rule change that would enable the imposition of an involuntary conversion to a new band plan would be inequitable toward licensees that have invested in acquisition and development of MMDS licenses, particularly BTA licenses which were purchased at auction, in reliance upon the then-existing FCC rules.

VCI anticipates deploying both high-powered systems and low-powered systems, within the same market area in some instances. In general, VCI supports the Coalition Proposal for transition to a new band structure, however we believe that caution should be used in specifying procedures by which this transition is initiated, the extent to which this transition is applied to all market areas, and the equitable compensation of affected licensees for their cost of transition. In Paragraph 1 of the Coalition Plan, it is proposed that Proponents pay the conversion costs of all affected ITFS operators. We propose that this compensation requirement be extended to affected non-Proponent MMDS licensees and operators, as well.

In Paragraph 83 of the NPRM, the Commission proposes to allow BTA holders to place transmitters anywhere within their service area without prior authorization so long as the operation complies with the applicable service rules and do not affect radiofrequency quiet zones or require environmental review or international coordination. We support this proposal.

In Paragraph 192, the Commission seeks comment on the rules governing construction requirements for site-based licenses. It has been our experience that construction of a site-based license is often interdependent with other site-based licenses or BTA licenses which may be delayed for one reason or another. We feel the 12-month construction period is reasonable, but would argue that the Commission should be reasonable in granting extensions of time to construct, where demonstrable economic or technical factors warrant.

In paragraph 200, the Commission seeks comment on the construction deadline for MDS BTA Authorization holders. We feel that the disruptive effect of the changes proposed in the NPRM is such that the construction deadline for these authorizations should be extended at least an additional two years from the date that the changes take effect. We also believe that this extension of construction deadlines should apply to all unconstructed site-based licenses and modifications. This will lessen the burden of constructing facilities that may soon need to be altered to accommodate any band plan changes.

Sincerely,

Stephen A. Merrill
Vice President