

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 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 Parts 21 and 74 to Enable Multipoint Distribution Service and the Instructional Television Fixed Service to Engage in Fixed Two-Way Transmissions)	MM Docket No. 97-217
)	
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
)	

REPLY COMMENTS OF BLAKE TWEDT AND JOHN DUDECK

We are licensees of numerous Multipoint Distribution Service ("MDS") stations located across the nation, and are submitting these reply comments in response to the Commission's Notice of Proposed Rulemaking ("NPRM") in this proceeding. Our facilities are generally leased to service providers that utilize the capacity to provide either multichannel video programming or wireless broadband services. As a result, we have a vital interest in the rules and policies that the Commission will ultimately adopt in this proceeding.

We are supportive of the Coalition Proposal submitted by the Wireless Communications Association, the National ITFS Association and the Catholic Television

Network. That proposal has numerous significant advantages that should lead to its adoption. Most importantly, it allows licensees and system operators to deploy either time division duplex (TDD) or frequency division duplex (FDD) technology, and to freely switch between the two as technology develops and marketplace demands evolve. At the same time, the Coalition Proposal minimizes the potential for interference when non-synchronized technologies operate on an adjacent channel basis in the same market or on a co-channel basis in neighboring markets by imposing a series of innovative rules that are far superior to requiring static guardbands. And, the Coalition Proposal relies on marketplace forces to govern transitions, allowing them to occur on a market-by-market basis rather than by some artificial date certain.

Rather than reiterate a discussion of the substantial benefits of the Coalition Proposal, which already are a matter of record, we are submitting these reply comments to refute proposed alternatives to the Coalition Proposal.¹

A. The Use Of Specific Technologies On Specific Channels Should Not Be Mandated By The Commission.

Fixed Wireless Holdings, LLC (“FWH”) and NextNet Wireless, Inc. (“NextNet”) have submitted proposals that would require that the channels in the lower and upper portions of the 2500-2690 MHz band be used for FDD technology and the channels in the middle of the band be used for TDD technology only.² The rules currently allow us to utilize either FDD or TDD technology -- a decision that is made based on an

¹ We should specifically note that while two sets of similar comments were filed by the Ad Hoc MMDS Licensee Consortium and the Independent MMDS Licensee Coalition suggesting that they speak for the “silent majority” of MDS licensees, they do not speak for us nor do they reflect our views in any manner. Indeed, to the extent they disagree with the Coalition Proposal, we urge the FCC to adopt the Coalition Proposal.

² See FWH Comments at 5; NextNet Comments at 4.

evaluation of the needs of the particular market. However, since we are H channel licensees, adoption of the FWH/NextNet proposal would force us and our affiliated system operators to use our channels solely for FDD technology. Given the substantial uncertainty in the marketplace at this time as to whether TDD or FDD technology is best suited for use in the 2500-2690 MHz band, this is a mandate the FCC should not issue. Rather, the public interest will best be served by affording each licensee the ability to deploy either FDD or TDD technology, and to migrate freely between those two alternatives as marketplace demand and technology evolves. No one knows whether one or the other technology will predominate or whether they will coexist, and the Commission can best promote the most effective and efficient use of the 2500-2690 MHz band by letting marketplace forces determine the best mix of TDD and FDD.

B. Marketplace Forces Should Govern The Timing Of Transitions.

As noted above, we are supportive of the Coalition Proposal's procedures for transitioning markets from the old bandplan to the new. Under the Coalition Proposal, transitions will occur very quickly once a "proponent" identifies itself. Thus, the introduction of services to the public will occur rapidly. Indeed, the Coalition Proposal will result in more rapid transitions than under the microwave relocation rules, since there will be no delay for voluntary negotiation periods, mandatory negotiation periods, and forced relocation proceedings.

A date certain approach will not only result in delay (some licensees will attempt to hold operators hostage until the 11th hour), but it will have adverse consequences on the legitimate interests of licensees and system operators. For example, if a proponent does not need a wireless cable system to cease its high-power operations, what is to be

gained by requiring that system to transition by some arbitrary date? While we appreciate that some of these systems may need to transition to serve the greater good of promoting the 2.5 GHz band for wireless broadband services, no public interest is served by requiring a cessation of operations before the next generation of services is ready to be deployed.

C. Licensees Should Be Afforded Sufficient Time To Meet New Substantial Service Requirements

The comments reflect overwhelming support for adoption of a “substantial service” test that will be utilized to determine whether MDS and ITFS channels are renewed. While we support the adoption of that proposal, we must reiterate the point that many others have made: the Commission must afford licensees sufficient time in which to meet this new standard once it goes into effect. The MDS/ITFS industry is in a state of transition, and it would be grossly unfair for the Commission to on one hand finally revise the rules so that MDS/ITFS-based broadband services have a fighting chance of succeeding while on the other hand stripping licensees of their holdings because they were unable to deploy quickly enough. The Commission should learn from the PCS experience – it takes time to build out a nationwide infrastructure. Imposing unrealistic deadlines on licensees will not change the financial and other realities that prevent the construction of nationwide infrastructure in one fell swoop. The better course is to provide licensees with sufficient time to construct the new generation of wireless broadband services.

D. The Commission Should Reject Proposals For Relocating One H Channel Into The MBS.

Finally, if the Commission desires to promote efficient use of the 2500-2690 MHz band, it should reject the proposal advanced by Grand Wireless Company, Inc. – Michigan (“Grand Wireless”) under which channel H2 would be relocated into the MBS.³ Grand Wireless provides no explanation as to why an H channel should be located in the MBS, and we can think of none.

The decision to place one channel for each of the A through G groups in the MBS was driven by the fact that each of those channel has ITFS licensees (including the E and F MDS channels, where there are grandfathered licensees dating back to the 1983 reallocation of those channels from MDS to ITFS). By contrast, it does not appear that there are any ITFS stations on the H channels and thus there appears to be no need for an H channel in the MBS. While Stanford University apparently is using an H channel MDS station to provide educational programming,⁴ it would be absurd for the Commission to add an H channel to the MBS nationwide because Stanford has chosen to use a commercial station in that manner. Since, as the NPRM acknowledges, the greatest demand is for cellular, low power services in this band, placing an H channel in the MBS would be to effectively waste spectrum that could be better used in the UBS.

³ See Grand Wireless Comments at 5.

⁴ See Stanford Comments at 21.

Respectfully submitted,

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