

**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 Parts 21 and 74 to Enable Multipoint Distribution Service and the Instructional Television Fixed Service Amendment of Parts 21 and 74 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**

The Law Firm of Blooston, Mordkofsky, Dickens, Duffy & Prendergast, on behalf of its rural MDS licensee clients listed in Attachment A hereto (the “Rural Commenters”), herby reply to comments submitted in the above captioned proceeding.<sup>1</sup> As demonstrated by the comments of the representatives of Multipoint Distribution Service (“MDS”) and Instructional Television Fixed Service (“ITFS”) rural operators, rural geographic areas present the Commission with

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<sup>1</sup> See 68 FR 111 (June 10, 2003). The Commission’s Notice of Proposed Rule Making and Memorandum Opinion and Order was released April 2, 2003. The Commission’s Second Memorandum Opinion and Order was released August 8, 2003 (FCC 03-194)(modifying the freeze on applications).

unique challenges unlike those faced by MDS and ITFS operators in medium and large-sized metropolitan areas.<sup>2</sup> The Commission must tailor any adoption of a new bandplan to the unique circumstances of incumbent rural MDS licensees. The proposed bandplan changes, if left unaltered, will impose excessive and disruptive costs upon them, and ultimately their customers. These concerns are greatest if fledgling wireless broadband service providers are forced to move to new frequency bands. Accordingly, the Rural Commenters echo the voices of the other rural companies that are participating in this proceeding by urging the Commission to take a reasoned approach to adoption and implementation of rule changes in this proceeding, so as not to take any action that would negatively impact the transmission of important video programming and broadband services to rural and unserved communities.

### **The Rural Commenters**

Consolidated Telcom holds MDS licenses for operations in the rural communities of Killdeer, Lefor, and Scranton, North Dakota (Channels E1-E4; F1-F4; and H1-H3). Polar Communications Mutual Aid Corporation has recently acquired the geographic area MDS license for the Grand Forks, North Dakota Basic Trading Area (“BTA”)(Channels F1-F4), and is presently attempting to bring wireless high-speed broadband services to rural service areas of North Dakota and Minnesota.<sup>3</sup> Santel Communications Cooperative, Inc. operates its MDS systems in the rural communities of Mitchell and Mt. Vernon, South Dakota (Channels E1-E4; F1-F4) and is likewise interested in providing advanced services to customers that have traditionally been left with little or no choice for such services.

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<sup>2</sup> See generally, Comments of Adams Telcom, Inc., Central Texas Communications, Inc., & Leaco Rural Telephone Cooperative, Inc, (“Bennet”), Teton Wireless Television, Inc., (“Teton”), and National Telecommunications Cooperative Association (“NTCA”).

<sup>3</sup> Applications pending for operation on channels E1-4; H1-3.

### **Elimination of Site-by-Site MDS Licensing**

The Rural Commenters demonstrated the importance of Commission action to modify its rules so that holders of MDS and ITFS geographic area licenses would not be required to apply for Commission consent to construct new facilities or modify existing facilities in their existing areas of operation. Like other wireless geographic area licensees, MDS and ITFS licensees should be free to construct and operate facilities within their service areas, subject only to the existing technical standards necessary to minimize interference, as well as environmental assessments. The Rural Commenters agree with Teton that BTA Authorization holders should not be required to obtain a station license for each transmitter.<sup>4</sup>

### **The Commission Should Liberalize its MDS Authorization Rules and Adopt A “Substantial Service” Option**

The Rural Commenters and other commenters<sup>5</sup> supported the Commission’s tentative conclusion that MDS Basic Trading Area (“BTA”) authorization holders should be allowed to place transmitters anywhere within their service area without prior authorization, so long as the operation (1) complies with the applicable service rules, including the requirement to protect incumbent operations from interference; (2) does not affect radiofrequency quiet zones; (3) does not require environmental review; and (4) does not require international coordination.

The Rural Commenters also demonstrated the benefits that the adoption of a “substantial service” approach would bring to rural America. The “substantial service” approach constitutes a much more reasonable alternative to the current construction requirements.

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<sup>4</sup> Teton Comments at 15-16.

<sup>5</sup> *Id.* at 16.

### **Geographic Area Licensing for Unassigned ITFS Licenses**

The Commission should license unassigned ITFS spectrum located in rural areas based upon the same BTA license areas associated with MDS channels. As shown by the Rural Commenters, the Commission has recognized that small service areas create opportunities for small and rural applicants to obtain spectrum. The economic and service characteristics of wireless broadband service are favorable for smaller geographic service areas. NTCA also supports geographic licensing for the unassigned ITFS spectrum, urging the Commission to protect rural incumbent users of the spectrum as “small and rural carriers have been using sites to provide services in areas with few, if any, other programming alternatives.”<sup>6</sup> The Rural Commenters agree with NTCA’s argument that both existing transmit and receive sites must be protected against harmful interference.<sup>7</sup>

### **The Proposed Transition Plan Must Adequately Protect Rural Operators’ Band Plans**

The Rural Commenters concur with other commenters that urge the Commission to ensure that rural operators are adequately protected from forced transitioning under the terms of the proposed transition plan. The band plan proposed by the Coalition<sup>8</sup> as well as the Commission’s two proposed alternatives, separate high-power and low-power operations and require incumbent MDS operators to change their channelization when the transition trigger is pulled. Rural Commenters and other MDS licensees have already spent millions of dollars to implement wireless broadband MDS services, and will have to spend additional millions pursuant to the proposed changes to the MDS band plan. The Rural Commenters support

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<sup>6</sup> NTCA at 5.

<sup>7</sup> *Id.*

<sup>8</sup> As set forth in the White Paper prepared by the Wireless Communications Association, International, the National ITFS Association and the Catholic Television Network (the “Coalition”)

NTCA’s argument that rural operators be permitted to utilize their own plan to respond to technology and market conditions, as opposed to a forced transition that may make no sense in rural America.<sup>9</sup> Rural markets have different economic and technical characteristics, and accordingly, if the Commission does not implement different rules for rural versus urban operators, then, as stated by Teton, the Commission should provide rural incumbents with an “opt-out” exemption to implementation.<sup>10</sup>

However, as the Rural Commenters demonstrated, if a MDS licensee is involuntarily forced to transition to a new frequency band, the entity pulling the transition trigger (the “cost-causer”) should bear the costs associated with the elimination of interference. The cost-causer should also be responsible for the other costs imposed by forced transition on the MDS licensee (e.g., retuning and other technical-related work). In other words, the cost-causer should be responsible for the reasonable costs that its actions impose on other licensees, whether those licensees are ITFS or MDS operators. In this way, the cost-causer can make a rational business decision as to whether it will pull the transition trigger and will not improperly impose costs on the licensees that are forced to transition to a new band plan.

As part of the transition process, the Commission also proposed three alternatives to the Coalition proposal. The Rural Commenters and other commenters<sup>11</sup> in this proceeding identified that a modified version of the proposed second alternative (whereby a three-phase transition process would be implemented) strikes the best balance for proper transitioning. Accordingly, the Rural Commenters urge the Commission to adopt the three-phase transition process.

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<sup>9</sup> NTCA Comments at 4.

<sup>10</sup> Teton Comments at 11.

### **A Uniform Band Plan Is Not Required**

As the commenters representing small, rural operators make obvious, not every market requires a uniform band plan. Large regional and national licensees may achieve economies of scale and face lower transactions costs if the Commission decides to adopt large geographic area-based uniform band plans. However, there is little evidence such licensees will actually serve rural communities. Instead, it is very likely that a national/regional licensee approach would result in little or no service to rural areas, and unjustly force the existing rural MDS operators to expend valuable resources for frequency relocation. As noted by NTCA, “the Commission would be doing a disservice to rural customers if it licensed the spectrum according to large territories.”

The Commission has recently recognized the unique characteristics of rural versus urban markets in its Notice, seeking comment on how best promote rapid and efficient deployment of wireless services in rural areas.<sup>12</sup> The Rural Commenters agree with Teton that if the Commission decides not to develop different implementation rules for rural areas, then it should exempt rural operators from implementation of spectrum changes until demanded by the rural market.<sup>13</sup> The Commission should not require existing MDS operators, especially those providing broadband services, to incur substantial unforeseen expenses and service interruptions to relocate to different frequencies unless and until their rural customers demand it.

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<sup>11</sup> Bennet Comments at 4-6, Teton Comments at 11.

<sup>12</sup> See, *Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services*, Notice of Proposed Rulemaking, WT Docket No. 02-381 (rel. October 6, 2003)(“Notice”).

<sup>13</sup> Teton Comments at 8-9.

### **Unlicensed Use of Unassigned ITFS Spectrum**

The Rural Commenters demonstrated that unlicensed technologies should not be permitted to operate in current white space in the ITFS spectrum, and where ITFS licenses are returned to the FCC, on a primary basis. It will be difficult if not impossible to “track down” an interference source, once consumers buy these unlicensed devices off-the-shelf and begin using them wherever they wish. Most commenters in this proceeding agree, and accordingly, the Commission should not allow unlicensed underlay operations in the band.

### **The Commission Should Reduce The ITFS Eligibility Restrictions**

As demonstrated by the Rural Commenters, and reiterated by several commenters in this proceeding, continued retention of the ITFS eligibility restriction is detrimental to the growth of services on the ITFS channels. It is not in the public interest for an MMDS operator who wants to change from providing one-way, high-powered television transmission operations from a single tower to providing two-way Internet access from multiple low-powered base stations, to first obtain consent of the ITFS operators in the market, especially since MMDS operators lease most of the available ITFS channels.

Several commenters, including Teton, NTCA, Bennet and Sprint urged the FCC to lift its ITFS eligibility restrictions so as to allow commercial use.<sup>14</sup> Specifically, NTCA agrees that the ITFS eligibility restrictions should be lifted so long as these commercial companies meet any “educational requirements.”<sup>15</sup> Bennet states that the entire wireless industry would benefit from the lifting of the restrictions, particularly “the rural wireless community, where affordable and usable spectrum is extremely scarce and where demand for advanced broadband and video

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<sup>14</sup> See e.g., Comments of Bennet, Teton, NTCA and Sprint Corp (“Sprint”) urging the Commission to permit ITFS licensees, in their sole discretion, to assign or lease their licenses in whole or in part to commercial system operators.

services is at an all-time high.”<sup>16</sup> The Rural Commenters also agree with Sprint that the lifting of the ITFS eligibility restriction will not “forcibly divest [ITFS licensees] of any spectrum,”<sup>17</sup> but rather will, as Teton notes, still “allow ITFS entities to retain their licenses, if they so choose.”<sup>18</sup>

The National ITFS Association and many of its member licensees argue that lifting the ITFS eligibility restrictions will likely “result in a *de facto* reallocation of this valuable spectrum resource from educational to commercial interests.”<sup>19</sup> Unfortunately, these arguments seem to ignore the stagnant state of ITFS in rural areas. Permitting non-educational, for-profit entities to exercise direct ownership and control of an ITFS station, so long as they comply with the Commission’s rules is in the public interest, especially in rural areas.<sup>20</sup>

## **Conclusion**

The Rural Commenters and the representatives of small, rural MDS and ITFS operators generally support the ideal of creating a new band plan so that the ITFS/MDS spectrum can be utilized for advanced fixed and wireless services to rural customers. However, these commenters have also demonstrated that, just as ITFS licensees are to be protected from transition-related elements, incumbent MDS licensees that may be involuntarily forced into the new band plan must also be appropriately protected. If a MDS operator elects to transition its own frequencies to a new band plan, then it should be able to do so. However, forced transitions should be minimized, and one way to do so is to adopt a band plan that recognizes the differences in rural versus urban areas. As the comments in this proceeding show, any rural MDS

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<sup>15</sup> NTCA Comments at 4.

<sup>16</sup> Bennet Comments at 9.

<sup>17</sup> Sprint Comments at 23.

<sup>18</sup> Teton Comments at 16.

<sup>19</sup> Joint Comments of the Catholic Television Network and the National ITFS Association at 5.

<sup>20</sup> NTCA Comments at 4.

operator required to relocate should be compensated by the Commission or by the private entity or entities requesting a particular MDS operator to relocate.

Respectfully submitted,

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Dated: October 23, 2003

**ATTACHMENT A**

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Park River, ND
- 3. SANTEL COMMUNICATIONS COOPERATIVE, INC.**  
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## CERTIFICATE OF SERVICE

I, Douglas W. Everette do hereby certify that I have on this 23<sup>rd</sup> day of October, 2003, had copies of the foregoing REPLY COMMENTS delivered to the following via electronic mail or U.S. mail\*:

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