

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of	)	
	)	
Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies To Provide Spectrum-Based Services	)	WT Docket No. 02-381
	)	
2000 Biennial Regulatory Review Spectrum Aggregation Limits For Commercial Mobile Radio Services	)	WT Docket No. 01-14
	)	
Increasing Flexibility To Promote Access to and the Efficient and Intensive Use of Spectrum and the Widespread Deployment of Wireless Services, and To Facilitate Capital Formation	)	WT Docket No. 03-202
	)	

COMMENTS OF THE WIRELESS COMMUNICATIONS ASSOCIATION  
INTERNATIONAL, INC.

The Wireless Communications Association International, Inc. (“WCA”) hereby submits its comments in response to the Commission’s *Notice of Proposed Rulemaking* (“NPRM”) in the above-captioned proceeding.<sup>1</sup>

As previously discussed in WCA’s comments on the Commission’s *Notice of Inquiry* in WT Docket No. 02-381,<sup>2</sup> WCA supports the Commission’s commitment to promoting

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<sup>1</sup> FCC 03-222 (rel. Oct. 6, 2003). WCA is the trade association of the wireless broadband industry. Its membership includes a wide variety of wireless broadband system operators, equipment manufacturers and consultants interested in the deployment of licensed and license-exempt spectrum for wireless broadband service in, *inter alia*, the 902-928 MHz, 2.1 GHz, 2.3 GHz, 2.4 GHz, 2.5 GHz, 5 GHz, 18 GHz, 24 GHz, 28 GHz, 31 GHz, 38 GHz and 70/80/90 GHz bands. Accordingly, WCA has an immediate and substantial interest in the *NPRM* and any further Commission action related to it.

<sup>2</sup> See Comments of Wireless Communications Ass’n Inc., WT Docket No. 02-381 (filed Feb. 3, 2003).

deployment of rural wireless service, and more particularly wireless broadband service. Indeed, in his remarks before the Commission's recent Rural Wireless ISP Showcase and Workshop, Chairman Powell left little doubt that promoting deployment of wireless broadband remains a cornerstone of the Commission's agenda for rural areas: "The people in this room are the embodiment of my goals for this Commission – you are facilities-based broadband providers competing in the marketplace taking advantage of our deregulatory spectrum policies. The opportunities in rural America are real – and the folks in this room are taking advantage of them."<sup>3</sup> The Chairman's remarks are yet another reminder that the Commission can and should adopt rules in this proceeding and elsewhere that eliminate outmoded barriers to deployment of wireless broadband service (and avoid creating any new ones), so that "Americans living and working in rural communities have access to the same kind of high quality infrastructure that is available in urban and suburban areas."<sup>4</sup>

While it is possible to deliver wireless broadband service in a variety of frequency bands, it is beyond argument that Multipoint Distribution Service ("MDS") and Instructional Television Fixed Service ("ITFS") spectrum in the 2150-2162 MHz ("2.1 GHz") and 2500-2690 MHz ("2.5 GHz") bands is optimally suited for delivery of wireless broadband service to rural areas. The Commission itself has recognized that

[MDS/ITFS] transmissions have a greater radius than upperband fixed wireless service, generally 35 miles versus three to five miles for upperband services. . .

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<sup>3</sup> Remarks of Chairman Michael K. Powell before the FCC Rural Wireless ISP Showcase and Workshop, Washington, DC (Nov. 4, 2003).

<sup>4</sup> *Id.*

[MDS/ITFS's] larger radius makes the service well-suited for not only residential customers, but customers in rural, underserved, and unserved areas as well.<sup>5</sup>

Not surprisingly, at the Rural ISP Showcase the Chairman cited the Commission's pending rewrite of its MDS/ITFS rules (WT Docket No. 03-66) as a broadband solution for rural areas, and in fact the Commission has observed that "in rural or otherwise underserved markets in the country, ITFS/MDS may be the *sole* provider of broadband service."<sup>6</sup> Not coincidentally, presentations at the Showcase by Sioux Valley Wireless ("SVW") and Evertex, Inc. ("Evertex"), plus other publicly available information, confirm that MDS/ITFS broadband service is already being deployed in rural areas. To cite just a few examples:

- Sioux Valley Wireless ("SVW"), a wholly owned subsidiary of Sioux Valley Energy in Colman, South Dakota, provides MDS/ITFS-based wireless broadband service to 1,500 customers in the Sioux Falls, SD metro and rural areas. The Company began providing "first generation" two-way wireless broadband service in 1998 upon obtaining a developmental two-way MDS authorization from the Commission.<sup>7</sup>
- NextNet Wireless and Evertex have expanded Evertex's broadband wireless access system across five new Iowa markets, having already launched the service in Pocahontas, Iowa in December 2001. The expansion covers over 19,000 subscribers in Sheldon, LeMars, Kingsley, Holstein, and Ida Grove, IA.<sup>8</sup>
- Virginia Communications, Inc. ("VCI") utilizes MDS/ITFS spectrum to provide wireless broadband service to consumers in Prescott, Arizona. VCI's customer

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<sup>5</sup> *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1983; Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Radio Services*, 15 FCC Rcd 17660, 17792 (2000).

<sup>6</sup> "Interim Report – Spectrum Study of the 2500-2690 MHz Band: The Potential for Accommodating Third Generation Mobile Systems," ET Docket No. 00-232, at 22 (November 15, 2000) (emphasis added).

<sup>7</sup> See "Company and Organization Descriptions at Rural Wireless ISP Showcase and Workshop," available at <http://www.fcc.gov/osp/rural-wisp/rural-wisporgs.html>; Reply Comments of Sioux Valley Wireless, WT Docket No. 03-66 (filed Oct. 23, 2003).

<sup>8</sup> See "NextNet and Evertex Expand Plug-and-Play Broadband Wireless System to Five New Markets, Covering Over 19,000 Subscribers," *Business Wire* (Nov. 11, 2002).

base includes residents, businesses, and both educational and municipal facilities in Prescott and surrounding rural areas, some of which have no cable modem or DSL service or even any landline telephone service. Among other things, the company recently entered into two contracts to provide broadband services on nearby Native American reservations. In just three years, VCI has invested over \$3,000,000 to establish its current level of service and, to address a large backlog of customer orders, continues to make large monthly investments to expand its wireless infrastructure.<sup>9</sup>

- On January 8, 2003, Navini Networks, Inc. (“Navini”) and Rioplex Wireless, Ltd. (“Rioplex”) announced plans to deploy second generation MDS/ITFS-based wireless broadband network to serve customers in the lower Rio Grande Valley, an area covering much of South Texas. The deployment will be the first full coverage broadband service in the area (encompassing 5,000 square miles), and will provide service to every county in the Rio Grande Valley from Western Rio Grande City to South Padre Island.<sup>10</sup>
- NextNet Wireless and Plateau Telecommunications (“Plateau”) have entered into an agreement under which Plateau, using NextNet’s equipment, will deliver broadband wireless services over MDS/ITFS spectrum to underserved business and residential subscribers across a 28,000 square mile footprint in New Mexico. Initially, Plateau will make its wireless broadband service to over 60,000 households in multiple locations within the footprint.<sup>11</sup>
- NextNet Wireless and Grand Forks Wireless are delivering MDS/ITFS-based broadband service to residential and business subscribers in Yuma, Arizona.<sup>12</sup>
- After nearly twelve years and well over \$20,000,000 of its own investment, W.A.T.C.H. TV has successfully transformed its operations from the 11-channel analog video-only service it launch in 1992 into a state-of-the-are network that utilizes all available MDS and ITFS spectrum to provide over 200 channels of

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<sup>9</sup> See Comments of Virginia Communications, Inc., WT Docket No. 03-66 (filed Apr. 8, 2003).

<sup>10</sup> See “Rioplex Wireless Deploying World’s Largest Next-Generation Wireless Broadband Network,” *PR Newswire* (Jan. 8, 2003).

<sup>11</sup> See “NextNet and Plateau Telecommunications Ink Deal for America’s Largest NLOS Plug-and-Play Broadband Wireless Deployment,” *Business Wire* (Nov. 13, 2003).

<sup>12</sup> See “NextNet and Grand Forks Wireless Deliver Broadband Wireless Access to Yuma, Arizona,” *Business Wire* (June 25, 2002).

digital video and audio programming and broadband service to more than 12,500 subscribers in Lima, Ohio and its rural outskirts.<sup>13</sup>

- Teewinot Wireless Data has launched MDS/ITFS-based 3G wireless broadband service in Missoula, Montana. As observed by Senator Conrad Burns (R-Montana) at the launch of the service, “[p]eople in rural states like Montana need to have access like this to ensure their inclusion in the rapidly expanding information age. . . A solid technological infrastructure such as this is part of the foundation needed to encourage small business growth in our communities.”<sup>14</sup>

Importantly, and as recognized by Chairman Powell, the deployments discussed above occurred in the face of an outdated regulatory scheme for MDS/ITFS:

The 2.5 GHz [MDS/ITFS] band has labored for years under the heavy hand of command-and-control regulation. The regime has not served the American people of the Commission’s licensees particularly well. Our rules have, at time, been complex and stifling, and have shifted in their objectives. . . Despite the uncertainty caused by these regulatory shifts, many licensees have strived to provide innovative and quality services.<sup>15</sup>

As alluded to in the Chairman’s remarks, the convoluted, broadcast style of interference analysis, application process and licensing in the current MDS/ITFS rules imposes entirely excessive transaction costs (both in terms of time and money) on providers of MDS/ITFS broadband service. As difficult as those costs are for broadband service providers in general, they are particularly onerous for those desiring to serve rural areas, where they are unable to

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<sup>13</sup> See, e.g., Barthold, “W.A.T.C.H. Out!” *Telephony* (Aug. 27, 2001); Comments of W.A.T.C.H. TV Company, WT Docket No. 03-66, at 1-2 (filed Sept. 8, 2003).

<sup>14</sup> See generally Mansell, “IPWireless Gaining Customers,” *Kagan Broadband Fixed Wireless*, at 6 (May 6, 2002); Rush, “3G Arrives in Montana,” *CED Broadband Direct* (June 3, 2002); “3G Broadband Wireless Comes to Montana; U.S. Senator Conrad Burns Hails the Nation’s First Mobile Broadband Deployment,” <http://www.teewinot.tv/PR060302.htm> (June 3, 2002).

<sup>15</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 MHz and 2500-2690 MHz Bands*, 18 FCC Rcd 6722, 6858 (2003) (separate statement of Chairman Powell) (“MDS/ITFS Rewrite NPRM”).

spread those costs over a larger number of subscribers.<sup>16</sup> Accordingly, in direct response to the October 7, 2002 “white paper” submitted by WCA, the National ITFS Ass’n and the Catholic Television Network (the “Coalition Proposal”),<sup>17</sup> the Commission issued a *Notice of Proposed Rulemaking* in WT Docket No. 03-66, proposing sweeping changes in the MDS/ITFS regulatory scheme.<sup>18</sup>

The details of the Coalition Proposal and the substantial MDS/ITFS industry support for it are a matter of public record in WT Docket No. 03-66 and need not be reiterated in detail here. Suffice it to say that, if adopted, the Coalition Proposal will facilitate more rapid deployment of rural MDS/ITFS broadband service by rationalizing the MDS/ITFS bandplan, substituting a Part 27-like regulatory model in lieu of the current broadcast-like model, permitting the use of multiple technologies in accordance with market demand, and giving MDS/ITFS licensees maximum flexibility to transition their facilities to the new bandplan in response to marketplace needs without putting their licenses at risk during license renewal.<sup>19</sup> With regard to the latter

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<sup>16</sup> As noted by the National Telecommunications Cooperative Association: “Rural carriers are especially hard hit by burdensome, unnecessary regulations. . . . However, wireless technology may provide the difficult “last mile” link to the most remote areas of rural America, areas that are very expensive, if not virtually impossible to reach via wired technology. Rural carriers should be encouraged to experiment with their wireless licenses so that they may provide service to previously unserved subscribers and bring the benefits of broadband to areas where other technologies are too costly or unavailable. However, under current regulation, every modification to a [MDS/ITFS] system, no matter how minor, takes significant time and resources. Comments of the National Telecommunications Cooperative Association, RM-10586, at 2 (filed Nov. 14, 2002).

<sup>17</sup> See “A Proposal for Revising The MDS and ITFS Regulatory Regime,” The Wireless Communications Association International, Inc. *et al.*, RM-10586, at 4-5 (filed Oct. 7, 2002).

<sup>18</sup> See *MDS/ITFS Rewrite NPRM*.

<sup>19</sup> More specifically, the proposal would (1) deinterleave the MDS/ITFS spectrum, such that highly cellularized systems can operate on fixed, portable and/or mobile bases without suffering interference from high power systems, and vice versa; (2) provide for continued downstream transmissions by high-power, high-site systems for operators who choose to remain in that mode; (3) eschew the current site-  
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point, the Coalition Proposal urges the Commission to apply a “substantial service” renewal test for MDS/ITFS similar to that already applied to other wireless services (both under Part 27 and elsewhere), coupled with the well-established “safe harbors” the Commission applies in other flexible use services and other provisions that recognize the unique circumstances surrounding the transition of MDS/ITFS licensees to broadband.<sup>20</sup>

Accordingly, for the reasons discussed in the Coalition Proposal and WCA’s comments and reply comments thereon, WCA supports the Commission’s proposal in this proceeding to adopt a “substantial service” alternative for all wireless services that are licensed on a geographic area basis and that are subject to construction requirements.”<sup>21</sup> However, it must be emphasized that a critical component of the Coalition Proposal is that, at least for the next MDS/ITFS renewal cycle, the Commission not merely examine the service that is being provided at the time of renewal, but also consider whether substantial service was provided at any time during the license term.<sup>22</sup> To do otherwise would plainly compromise the Commission’s policy of flexible use -- licensees will be reluctant to migrate from current video services to broadband offerings

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based licensing system and replace it with rules modeled on those in Part 27, thus permitting licensees the freedom to construct and operate facilities within geographic service areas, subject only to compliance with technical rules intended to minimize interference between systems, antenna structure requirements, and RF emission limits; (4) establish a market-by-market mechanism for transitioning MDS/ITFS video systems from their existing spectrum to appropriate spectrum in the new bandplan; and (5) remove regulatory underbrush and otherwise conform the MDS/ITFS rules to the regulatory framework generally used by the Wireless Telecommunications Bureau for other “flexible use” services. *See* Coalition Proposal at 11.

<sup>20</sup> *See, e.g.*, Comments of Wireless Communications Ass’n International, National ITFS Ass’n and Catholic Television Networks, WT Docket No. 03-66, at 86-94 (filed Sept. 8, 2003).

<sup>21</sup> *See NPRM* at ¶ 35. The Commission notes that this would include MDS/ITFS, 30 MHz broadband PCS licensees, 800 MHz SMR licensees (blocks A, B and C only), certain 220 MHz licensees, LMS licensees and 700 MHz public safety licensees. *Id.*

<sup>22</sup> *See* Coalition Proposal at 46 n.122.

when approaching renewal, regardless of marketplace demand, for fear that they will not be providing substantial service at renewal time.

Adoption of the Coalition Proposal will allow the Commission to tailor its review to the peculiar circumstances that are confronting many rural MDS and ITFS licensees who face renewal over the next few years, *i.e.*, spectrum that they used extensively for video or other services during the license term may not be used extensively at the time of renewal because renewal happens to occur in the midst of a transition to the next generation of broadband service offerings. Many rural MDS/ITFS licensees currently have a strong interest in discontinuing the provision of video or other services to migrate to broadband services once the Commission revises its rules. Such action makes sense and should be encouraged – there is no public interest benefit to preserving non-viable service offerings merely because renewal approaches. Yet, that is exactly what will happen if the Commission insists on taking a “snapshot” of usage at renewal and judging a licensee’s performance based solely on the extent it is providing service on a given date. Indeed, a “snapshot” approach will have the unfortunate effect of delaying the deployment of broadband services in rural areas – licensees will refrain from ceasing obsolete services and starting the transition until after their renewal applications are granted.<sup>23</sup>

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<sup>23</sup> A “snapshot” approach to judging performance also would be inconsistent with any of the approaches to transitioning to the new bandplan suggested in the *MDS/ITFS Rewrite NPRM*. Appendix B to the Coalition Proposal advances a regime under which the transitional process may force the discontinuance of service in one or more markets in order to promote broadband deployment. The Commission, however, has suggested transition alternatives that may require current operations to cease as of a date certain, which may come at or about a given licensee’s renewal date. *See MDS/ITFS Rewrite NPRM*, 18 FCC Rcd at 6763-65. Certainly, a licensee who has been forced to cease operations by virtue of these transition policies should not be penalized at renewal or otherwise have its license jeopardized. Simply stated, the evolution of MDS and ITFS to second generation broadband will not be easy, and it will not occur overnight. The Commission can facilitate the process by making clear that it will not penalize licensees that had been providing service but happen not to be doing so at the time of renewal or any other time because they are evolving to new types of service offerings.

Finally, WCA agrees with the Commission that “spectrum in rural areas that is leased by a licensee, and for which the lessee meets the performance requirements that are applicable to the licensee, should be construed as ‘used’ for the purposes of this proceeding and any other performance criteria [the Commission] adopt[s].”<sup>24</sup> Clearly, the overriding objectives of the Commission’s secondary markets policy would be defeated if wireless licensees are penalized at renewal for engaging in exactly the sort of spectrum leasing transactions that secondary markets are designed to promote.<sup>25</sup> The Commission’s proposal is especially appropriate for MDS/ITFS, since spectrum leasing has been a staple of the Commission’s MDS/ITFS rules for twenty years and leased spectrum has always been considered as “used” for purpose of measuring licensee performance.<sup>26</sup>

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<sup>24</sup> *Rural Wireless NPRM* at ¶ 20.

<sup>25</sup> WCA’s position on the Commission’s secondary market policy is set forth in more detail in its comments on the Commission’s *Further Notice of Proposed Rulemaking* in WT Docket No. 00-230. *See* Comments of Wireless Communications Ass’n International, WT Docket No. 00-230 (filed Dec. 5, 2003).

<sup>26</sup> It should be noted, however, that licensees in higher frequency bands have also been supportive of the Commission’s secondary markets policy. *See* Comments of Winstar Communications, LLC, WT Docket No. 00-230 (filed Dec. 5, 2003).

WHEREFORE, for the reasons set forth above, WCA reiterates its support for the public interest objectives of the *Rural Wireless NPRM* and the Commission to take immediate action towards adoption of the Coalition Proposal in WT Docket No. 03-66.

Respectfully submitted,

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