

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
)	

REPLY COMMENTS OF THE WIRELESS COMMUNICATIONS ASSOCIATION INTERNATIONAL, INC.

The Wireless Communications Association International, Inc. (“WCA”) hereby submits its reply comments with respect to the Commission’s *Notice of Proposed Rulemaking* (“*Rural Wireless NPRM*”) in the above-captioned proceeding.

As discussed in WCA’s initial comments on the *Rural Wireless NPRM*, the Commission has long recognized that MDS/ITFS spectrum in the 2.1 and 2.5 GHz bands is an ideal vehicle for delivery of wireless broadband service to rural areas, and presentations at the Commission’s recent Rural ISP Showcase and other publicly available information on MDS/ITFS deployments have confirmed as much.¹ It therefore is critical that the Commission act expeditiously to adopt

¹ See Comments of Wireless Communications Ass’n International, Inc., WT Docket No. 02-381, at 1-4 (filed Dec. 29, 2003) (“WCA Comments”).

the sweeping regulatory reforms for MDS/ITFS recommended in the October 7, 2002 “white paper” submitted by WCA, the National ITFS Association and the Catholic Television Network (the “Coalition Proposal”),² and subsequently proposed in the Commission’s pending *Notice of Proposed Rulemaking* in WT Docket No. 03-66. If adopted, the Coalition Proposal will facilitate more rapid deployment of rural MDS/ITFS broadband service by, among other things, utilizing a “substantial service” renewal test similar to that already applied to other wireless services, coupled with well-established “safe harbors” and other provisions that recognize the unique technical characteristics of MDS/ITFS broadband systems.³ It is for that reason that WCA supports the Commission’s proposal in the *Rural Wireless NPRM* 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.”⁴

Other commenting parties have taken a similar view. For instance, as noted by the Cellular Telecommunications & Internet Association (“CTIA”):

CTIA supports the addition of a substantial service option in all services. The addition of this construction requirement option will provide carriers in rural areas a greater incentive and ability to raise necessary capital and to construct facilities and provide services that are situated to the needs of the rural area. The successful track record of rural deployment in CMRS services that have substantial service construction requirements has demonstrated that this approach is effective in ensuring rural consumers have access to competitive wireless offerings. The addition of a substantial service option will, in addition, harmonize the construction requirements across all services, and potentially increase the

² See “A Proposal for Revising The MDS and ITFS Regulatory Regime,” Wireless Communications Ass’n International, Inc. *et al.*, RM-10586, at 4-5 (filed Oct. 7, 2002).

³ See, e.g., Comments of Wireless Communications Ass’n International, National ITFS Ass’n and Catholic Television Network, WT Docket No. 03-66, at 86-94 (filed Sept. 8, 2003).

⁴ See *Rural Wireless 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.*

value of those licenses currently lacking the substantial service option, enhancing their ability to raise capital to expand deployment to rural areas.⁵

Perhaps more important, however, those who directly represent rural interests in this proceeding have taken a similar view. In particular, the National Telecommunications Cooperative Association (“NTCA”) points out that the “substantial service” renewal standard is especially appropriate for services which, like MDS, are licensed to serve smaller geographic areas than other geographically-licensed services.⁶ As noted in NTCA’s comments:

NTCA agrees that construction requirements that condition license renewal on serving a percentage of the population discourage rural build out and innovation. However, the “substantial service” requirement is appropriate only when spectrum is licensed according to small geographic territories. . .

The appropriate build out scheme for large versus small license territories is different for a simple reason. Providing “substantial service” in a small geographic area covering a rural territory necessarily involves serving the rural territory. Providing “substantial service” in an area covering many large cities or suburban communities could mean completely ignoring all rural territory indefinitely. . . When spectrum is licensed according to large service areas, the only way to ensure that spectrum will be made available to carriers seeking to serve the rural territory is to force the large carriers to part with what they are not using.⁷

⁵ Comments of Cellular Telecommunications & Internet Ass’n, WT Docket No. 02-381, at 5 (filed Dec. 29, 2003) (“CTIA Comments”). Likewise, AT&T Wireless Services, Inc., which “has extensively utilized Commission-created mechanisms, such as partitioning and disaggregation, to provide opportunities for other carriers in more than 100 rural markets,” states that “[i]n the absence of any evidence of market failure, . . ., there is no justification for imposing new performance requirements on wireless carriers licensed to serve rural areas. . . While wireless carriers deployed first in areas with dense populations, they are now moving as quickly as resources will allow to extend their coverage in rural areas. Government-mandated deployment schedules could lead to construction in areas with little demand and result in stranded investment in wireless infrastructure.” Comments of AT&T Wireless Services, Inc., WT Docket No. 02-381, at 1-2 (filed Dec. 29, 2003) (“AT&T Wireless Comments”).

⁶ Since the Commission’s 1995 conversion of the MDS licensing regime from a site-based to a geographically-based system, MDS has been licensed according to Basic Trading Areas (“BTAs”). There are nearly 500 BTAs in the United States and its territories.

⁷ Comments of National Telecommunications Cooperative Ass’n, WT Docket No. 02-381, at 10-11 (filed Dec. 29, 2003).

Accordingly, insofar as MDS/ITFS is concerned, the Commission should reject the suggestion by a small number of commenting parties that the Commission abandon the “substantial service” test for all wireless services in rural areas, and instead utilize an across-the-board “keep what you use” approach that relies on statistical benchmarks.⁸ Whatever the merits of those arguments may be (and WCA is not conceding that they have any merit at all), they plainly do not apply to MDS/ITFS for the reasons noted by NTCA. Moreover, as discussed in WCA’s initial comments in this proceeding, 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 (“wireless cable”) 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 service offerings. Again, it must be remembered that many rural MDS/ITFS licensees currently have a strong interest in discontinuing the provision of wireless cable or other services to migrate to broadband services once the Commission revises its rules in WT Docket No. 03-66. Such action makes sense and should be encouraged – there is no public interest benefit in preserving non-viable service offerings merely because renewal approaches. Finally, the Commission can close any lingering “gaps” in MDS/ITFS service in rural areas simply by allowing rural wireless carriers to take advantage of MDS/ITFS spectrum leasing opportunities under the Commission’s “secondary markets” policy, and by declaring that “spectrum in rural areas that is leased by a licensee, and for which the lessee meets the

⁸ See Comments of The Organization for the Promotion and Advancement of Small Telecommunications Companies and the Rural Telecommunications Group, WT Docket No. 02-381, at 5 (filed Dec. 29, 2003); Comments of Rural Cellular Ass’n, WT Docket No. 02-381, at 7-8 (filed Dec. 29, 2003).

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].”⁹

In sum, the issue of applying a substantial service standard to MDS/ITFS in accordance with the Coalition Proposal has already been presented to the Commission in WT Docket No. 03-66, and enjoys unanimous support from MDS/ITFS operators in that proceeding. Any further consideration of that issue should remain limited to that proceeding and should be decided solely with reference to the record created therein. Conversely, any departure from the substantial service test for other geographically-licensed wireless services should be limited to the *Rural Wireless NPRM* and be considered therein by the Commission without any impact on the agency’s ultimate resolution of the Coalition Proposal in WT Docket No. 03-66.

⁹ *Rural Wireless NPRM* at ¶ 20. See also, e.g., AT&T Wireless Comments at 2 (“The Commission’s recently-adopted establishment of a secondary market in spectrum will . . . promote the availability of wireless service in rural areas.”); CTIA Comments at 6 (“[T]he Commission should clarify both the (continued on next page)

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

Respectfully submitted,

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existing construction benchmarks and the proposed substantial service option to expressly indicate that leased spectrum will count towards satisfaction of either performance requirement.”)