

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Parts 21 and 74 of)
the Commission's Rules with Regard) MM Docket No. 94-131
to Filing Procedures in the)
Multipoint Distribution Services and)
in the Instructional Television)
Fixed Service and)
)
Implementation of Section 309(j) of) PP Docket No. 93-253
the Communications Act)
Competitive Bidding)
_____)

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To: The Commission

JOINT REPLY OF
BELL ATLANTIC CORPORATION and NYNEX CORPORATION

Pursuant to Section 1.429 of the Commission's Rules, Bell Atlantic Corporation and NYNEX Corporation, on behalf of its subsidiaries, hereby submit their joint reply to the comments and oppositions filed on September 13, 1995, regarding Bell Atlantic's Petition for Partial Reconsideration (BAC Petition) of the rules and policies adopted in the above-referenced dockets. See Report and Order, FCC 95-230 (released June 30, 1995) (BTA Order).

Bell Atlantic recommended three minor modifications of the rules and policies governing BTA authorizations to improve the usefulness of the spectrum and to facilitate build-out within the BTA.¹ One of Bell Atlantic's proposals was

¹ Although most commenters sought to clarify or fine tune the BTA Order, A/B Financial challenged the Commission's authority to proceed with the planned

unopposed. Accordingly, as recommended, the Commission should develop rules which provide for consistent treatment of the protected service areas of ITFS and MMDS channels leased to the BTA authorization holder at the boundaries of an adjacent BTA.² The objections to the remaining proposals raise no serious concerns and deserve no credence. Accordingly, Bell Atlantic and NYNEX recommend that the modifications proposed in the BAC Petition be adopted to achieve the goals of the BTA Order -- to promote efficient utilization of spectrum and to develop viable competitors to incumbent cable television systems.³

I. THE COMMISSION SHOULD ADOPT BLANKET LICENSING FOR TRANSMITTERS CONSTRUCTED BY BTA AUTHORIZATION HOLDERS.

Bell Atlantic recommended that the Commission adopt a "blanket licensing" procedure to facilitate construction of transmitters by the BTA authorization holder. BAC Petition, at 3-10. The governing principles of this proposal include:

- o At the time set for filing long-form applications, the BTA authorization holder would instead file a "blueprint" of the BTA, showing the protected service areas and receive sites of incumbent stations which its

MMDS auction. A/B's arguments were all rebutted in the comments filed by the Wireless Cable Association International (at 12-15) and NYNEX (at 11-13).

² See BTA Order, ¶ 41; BAC Petition, at 13-14; NYNEX Comments, at 6-7.

³ NYNEX also joins in Bell Atlantic's recommendation that the Commission limit those stations which can be grandfathered to exceed the -73 dBw/m^2 PFD at 35 miles from the transmitter to the circumstances identified in the BTA Order (¶ 57), i.e., stations using directional antennas authorized or proposed as of the date on which the order was released, June 30, 1995. See BAC Consolidated Comments and Opposition, at 8-9 (dated Sept. 13, 1995).

transmitters utilizing the E-, F- and H-Channel groups and MDS Channels 1 and 2 would be required to protect from harmful interference in accordance with the rules adopted in the BTA Order.

- The BTA blueprint would be served on all applicants, permittees and licensees with receive sites or protected service areas identified therein, and they would have 30 days to file objections or propose corrections to the information.

- The BTA blueprint would thus map the areas in the BTA that the BTA authorization holder is entitled to serve as well as the areas it must protect.

- The BTA authorization holder would be permitted to construct transmitters anywhere within the BTA subject to providing interference protection as set forth in the BTA blueprint, as corrected

- After construction of a transmitter, the BTA authorization holder would file a certification of construction with the Commission, which would also be served on all MMDS and ITFS applicants, permittees and licensees with receive sites or protected service areas within 50 miles of the transmitter.

- Construction of transmitters would be subject to the Commission's new interference abatement procedure, 47 C.F.R. § 21.939, and thus undertaken pursuant to the BTA authorization holder's duty to remedy harmful interference. See 47 C.F.R. § 21.938(c).

Pacific Telesis Enterprise Group and Cross Country Wireless (filing jointly) agree with Bell Atlantic and NYNEX that the blanket licensing approach for BTA authorizations would serve the public interest by promoting fair, efficient and

expedited service to the BTA. See PacTel Comments, at 5; NYNEX Comments, at 6-7. Blanket licensing also increases the value of BTAs to potential bidders, as the potential for dispute and delay which, in the past, have hindered timely processing of MMDS applications would be curtailed. See BAC Petition, at 5-7.

Instructional Telecommunications Foundation (ITF) and Wireless Cable Association International (WCAI) object to Bell Atlantic's blanket licensing approach, asserting first that there would be insufficient opportunity for affected parties to address potential or actual interference issues. See ITF Opp., at 3; WCAI Comments, at 8-9. In fact, there are at least three stages which provide opportunities for comments and objections on the BTA winner's facilities: (1) during the period for comments on the BTA blueprint;⁴ (2) upon receipt of notice of transmitter construction; and (3) after the occurrence of actual interference pursuant to the interference abatement procedure of Section 21.939.

Given these multiple opportunities for objection, and the specific obligation in the Commission's Rules for MDS licensees to abate harmful interference, it is apparent that merely preserving the opportunity to comment on the BTA winner's construction plan is not the primary goal of ITF and WCAI. Rather, they oppose blanket licensing because it does not require the BTA authorization holder to obtain the imprimatur of incumbent station operators before construction. But it

⁴ PacTel suggested that the BTA authorization holder should be allowed to proceed immediately with those aspects of its blueprint to which there was no objection. PacTel Comments, at 5. Bell Atlantic and NYNEX endorse this proposal, and recommend its adoption.

is precisely this problem that Bell Atlantic's proposal addresses, and that warrants its adoption.

The long-form application process adopted in the BTA Order gives incumbents the power to derail progress or manipulate timing of build-out of the BTA by new MMDS licensees through the petition to deny and/or consent process.⁵ But, the Commission's new rules eliminate the need for this time-consuming and deleterious process. The signal strength of the BTA transmitters are limited by the Commission's rules at each ITFS receive site and MMDS protected service area. See BTA Order, ¶¶ 53-54. Moreover the Commission has taken great pains to set the boundaries of protected service areas for all incumbent stations to provide certainty for BTA winners with respect to the service area of the BTA. See id., ¶¶ 48-55.

This new regime for licensing MDS calls for a break from the past in which little progress has been made in developing wireless cable. ITF and WCAI have pointed to no reason why incumbents do not have adequate opportunity for comment on construction by the BTA winners. More importantly, their objections

⁵ Both ITF and WCAI noted that the Bell Atlantic compared its proposal to the PCS licensing rules but did not propose a coordination requirement similar to Section 24.237 of the Commission's Rules, which requires PCS licensees to coordinate with incumbents before constructing. See ITF Opp., at 2; WCAI Comments, at 9. However, the BTA blueprint will provide an opportunity for MMDS and ITFS incumbents to enter into a dialog with the BTA winner before construction. The fact that it will be subject to notice and comment provides assurance that incumbents will have an opportunity to express their concerns.

present no reason why the public, as opposed to incumbents, would not be better served by expediting the build-out process through the blanket licensing approach.

WCAI also objects that the blanket licensing approach does not provide a means for resolution of actual interference. See WCAI Comments, at 9-10. To the contrary, the Commission adopted rules which provide a procedure for interference abatement. See 47 C.F.R. § 21.939. Moreover, under the blanket licensing approach, the BTA winner constructs at its own risk of causing actual interference, which will motivate the BTA authorization holder to plan construction to avoid interference. See 47 C.F.R. § 21.938(c). There is absolutely no reason for rejecting the blanket licensing proposal on this ground.

ITF complains that the blanket licensing approach does not provide sufficient opportunity for modification of ITFS facilities to add receive sites after approval of the BTA blueprint. See ITF Opp., at 2; see also infra § II. But, even under the Commission's current rules, authorized stations are not obligated to curtail co- or adjacent-channel interference to permit service to a new ITFS receive site in a later-filed application. ITF's objection is thus based on the erroneous assumption that, under the Commission's BTA rules and policies, ITFS operators should have a right which they do not have now

In its comments, PacTel agrees with Bell Atlantic's blanket licensing proposal, but also suggests an alternative procedure -- as a fall-back position -- of permitting the BTA winner a 24-month period in which to build out, subject to providing interference protection to existing stations. At the end of that period,

ITFS and MMDS operators could file applications for new or modified facilities which would only be required to protect a 35-mile circle for each transmitter site licensed to or applied for by the BTA winner. PacTel Comments, at 6-8.

This proposal has two adverse effects on the BTA. First, by permitting incumbents to file competing applications after 24 months, PacTel's proposal unjustifiably reduces the term of the BTA authorization from five to two years. See 47 C.F.R. § 21.930. Second, by limiting protection to a 35-mile circle, the proposal radically changes the licensing regime adopted in the BTA Order. PacTel's alternative would require a drastic and unwarranted restructuring of the BTA rules and policies. PacTel provides no reason why its proposal benefits subscribers, incumbents or BTA winners.

None of the objections advanced by ITF and WCAI provides a rational basis to reject the blanket licensing approach. As Bell Atlantic outlined in its Petition (at 8-10), this approach would promote efficient and effective use of spectrum and increase the value of the BTA. The blanket licensing proposal should be adopted.

II. THE COMMISSION SHOULD REJECT ANY REDUCTION IN RIGHTS AWARDED TO THE BTA AUTHORIZATION HOLDER.

ITF incorrectly claims that "[l]ong-form applications also allow ITFS licensees to modify their facilities during the process of a BTA build-out, and to protect the modified facilities from interference." ITF Opp., at 2. As ITF itself recognized in its Petition for Partial Reconsideration and Clarification (at 5-6), the new rules for BTA authorizations create a protected service area throughout the

BTA on the E-, F- and H-Channels. BTA Order, ¶ 39. Any modification of ITFS facilities on Channels D4 or G1-4 must provide interference protection to the BTA service area consistent with the rules and policies adopted in the BTA Order.

Thus, the mere use of long-form applications does not change the protected service area available to the BTA winner or allow existing ITFS stations to modify their facilities at will to the detriment of the rights of the BTA authorization holder. Any application filed to modify a co- or adjacent channel MMDS or ITFS facility must meet the interference protection requirement for the BTA.

Accordingly, the Commission should not retain the long-form application requirement and permit incumbents such as ITF to assume that service on the E-, F- and H-Channels can be curtailed as a result of filings by ITFS entities on the D- and G-Channels. Once BTA winners become "incumbents," new construction of D4 or G1-4 facilities must protect the rights to MMDS frequencies acquired within the BTA. While under the Commission's new rules, the protection for BTA frequencies would not change whether the BTA winner files a long-form application or a post-construction certification for each transmitter, the blanket licensing proposal provides greater efficiency and fewer delays in processing, and, therefore, merits adoption.

III. THE COMMISSION SHOULD PERMIT EXPANDED CARRIAGE OF ITFS FREQUENCIES LEASED BY THE BTA AUTHORIZATION HOLDER.

Bell Atlantic also proposed that the Commission permit expanded carriage of the signals of ITFS stations leased by the BTA authorization holder. BAC Petition, at 10-13. Only ITF opposed this proposal, claiming that there may be no educational sites which would justify expanded carriage and that expanding the reach of existing stations may block new entities from obtaining licenses. ITF Opp., at 3-4. These objections are flawed and inconsistent with the Commission's desire to promote ITFS.

First, carriage of ITFS signals to areas without educational sites is inherent in the opportunity to lease excess capacity whether inside or outside the 35-mile protected service area of a station. Moreover, the Bell Atlantic proposal specifically included access for new ITFS licenses in those areas of the BTA which were outside the 35-mile circles of existing stations. BAC Petition, at 12. Thus, neither of ITF's objection raises a concern for the continued use of ITFS.

Second, Bell Atlantic's proposal actually benefits ITFS interests by providing an opportunity for existing licensees to serve additional educational sites which may not otherwise have access to distance learning and thereby extending the mission of the educational institution. It also provides an opportunity for additional revenues for the ITFS licensee by increasing the number of subscribers viewing its ITFS channels. Rejecting the Bell Atlantic proposal would have the effect of precluding these benefits for ITFS operators and allowing unused ITFS

frequencies in the BTA to lie fallow. That result is inconsistent with the Commission's goals of efficient spectrum utilization and encouraging wireless competitors to incumbent cable television systems.

IV. CONCLUSION

As discussed above and in the Petition for Partial Reconsideration, Bell Atlantic and NYNEX urge the Commission to adopt Bell Atlantic's proposed modifications of the rules and policies in the BTA Order.

Respectfully submitted,

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