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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC

In the matter of	)	
	)	
Rulemaking to Amend Parts 1, 2, 21 and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services	)	CC Docket No. 92-297
	)	
and	)	
	)	
Suite 12 Group Petition for Pioneer's Preference	)	PP-22

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BELL ATLANTIC REPLY COMMENTS

Introduction and Summary

Bell Atlantic Corporation hereby respectfully replies to the comments filed in response to the Commission's Third Notice of Proposed Rulemaking and Supplemental Tentative Decision ("Third Notice"). Bell Atlantic and many other parties support the Commission's tentative conclusions in the Third Notice. These parties recognized that the Commission had carefully considered the concerns and arguments of all the parties and developed a reasonable compromise. The Commission should finalize that compromise expeditiously so that the public can receive the benefits of new services to be offered in the 28 GHz band.

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Several parties are apparently unwilling to compromise and have taken the opportunity to reargue the very same arguments that the Commission has already considered and rejected. Some ask the Commission to move LMDS service to the 40 GHz band while others seek to limit the entities eligible for LMDS licenses. These transparent attempts to further private interests and scuttle LMDS as an imminent competitive technology for video and other telecommunications services should be completely disregarded.

Comments filed on behalf of three groups ask the Commission to provide for non-commercial programming in the spectrum allocated for Local Multipoint Distribution Service ("LMDS"). If the Commission decides to accommodate such programming, it should do so by adopting their alternative proposal and granting credits to bidders that agree to make LMDS capacity available at reduced rates.

I. THE COMMISSION SHOULD FINALIZE ITS BAND SEGMENTATION PLAN AND SHOULD NOT RELEGATE LMDS TO THE 40 GHz BAND

In the Third Notice, the Commission "attempted to design a band segmentation plan that will meet [the Commission's] goal of accommodating all the types of proposed services for this frequency band."[1] The Commission proposed its plan because it was "convinced that denying one or the other of the proposed services is not in the public interest."[2]

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[1] Third Notice at ¶ 34.

[2] Id.

The comments filed in response to the Third Notice evidence a wide range of support for the Commission's band segmentation plan as a reasonable compromise among competing interests. Representatives of LMDS proponents,[3] equipment manufacturers,[4] satellite companies,[5] state and local governments,[6] telephone companies,[7] cable television companies[8] and public television broadcasters[9] endorsed the Commission's plan.

Some parties, however, could not resist the temptation to reargue their positions that the Commission had already considered and rejected. For example, a few satellite representatives argued that the entire 28 GHz band should be allocated for satellite purposes and that LMDS should be relegated to the 40 GHz band. These arguments are completely without merit.

First, allocating spectrum in the 28 GHz band for LMDS insures that a wide range of products and services will be made available on a competitive basis to residential and business consumers in a timely fashion. Lockheed Martin Corp. dismisses LMDS as

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[3] See, e.g., Comments of CellularVision at 3-6.

[4] See, e.g., Comments of Texas Instruments at 11-14.

[5] See, e.g., Comments of Teledesic Corp. at 4 ("in the interest of creating certainty and for purposes of facilitating an expeditious resolution of this proceeding in advance of WRC-95, Teledesic supports the FCC's proposed 28 GHz band segmentation plan").

[6] See, e.g., Comments of the law firm of Duncan, Weinberg, Miller & Pembroke representing about 100 state and local government entities ("S&L Comments") at 2-3.

[7] See, e.g., Comments of BellSouth at 5

[8] See, e.g., Comments of Cox Enterprises, Comcast Corporation, and Jones Intercable (the "Joint Parties") at 2.

[9] See, e.g., Joint Comments of the Associations of America's Public Television Stations and Public Broadcasting Service ("Public Television Comments") at 2-3.

simply one more competitor in the multichannel video programming delivery market and argues that "satellite-based technology is poised to create innovative new services that will offer greatly enhanced telecommunications capabilities around the globe for a wideband or high speed interactive video, voice and data applications."[10] The Commission, however, has already noted that these same "innovative new services" can be provided through existing LMDS technology.[11]

Moreover, there is a substantial question as to when, if ever, satellite companies might actually start delivering these services to homes and businesses. As the Satellite Industry Association explained,

> In addition to these massive capital outlays, the satellite industry faces unique risks and extensive lead times that make it difficult to obtain financing for such projects. Satellites can require five years or more to develop and launch and have substantial risk factors (such as the risk of launch failure and the limited life of the satellite). These substantial risks and the significant length of time until returns can be received make it difficult to obtain suitable investors even under the best and most certain of regulatory environments.[12]

By finalizing its band plan allocating 1,000 MHz of spectrum for LMDS service, the Commission can insure that better services are provided more quickly to the public than by changing its band segmentation plan to allocate even more spectrum for satellite services.

Second, moving LMDS to the 40 GHz band would delay the introduction of important competitive services and make them more costly. LMDS equipment that

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[10] Comments of Lockheed Martin Corp at 2

[11] See Third Notice at ¶ 29 ("CellularVision states that the technology it proposes is 'capable of immediately providing interactive high quality video, voice, and data services'").

[12] Satellite Industry Association Comments at 17.

operates in the 28 GHz band is available now and is being used commercially by CellularVision in New York and outside the United States. By contrast, LMDS equipment operating in the 40 GHz band is not available today and will not likely be available for at least two to five years.[13] Moreover, the cost of deploying an LMDS system at 40 GHz would be greater than an LMDS system at 28 GHz and would place LMDS at a competitive disadvantage.[14]

Finally, allocating spectrum in the 28 GHz band for LMDS will enable the federal government to collect auction revenues for this valuable spectrum. Virtually all commentors representing satellite interests opposed auctioning spectrum on both legal and policy grounds.[15] It is quite apparent that these parties will mount extensive legal challenges to any Commission attempt to auction spectrum for satellite uses. By contrast, LMDS proponents have continuously acknowledged the commercial value of this spectrum and their willingness to pay for it through an auction.[16]

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[13] Amendment of Parts 2 and 15 of the Commission's Rules to Permit Use of Radio Frequencies Above 40 GHz for New Radio Applications, ET Docket No. 94-124, RM-8308, Reply Comments of Bell Atlantic at 4 (filed March 1, 1995); Reply Comments of M/A COM at 1 (filed March 1, 1995).

[14] See, e.g., Amendment of Parts 2 and 15 of the Commission's Rules to Permit Use of Radio Frequencies Above 40 GHz for New Radio Applications, ET Docket No. 94-124, RM-8308, Reply Comments of M/A-COM at 1-2; and Reply Comments of Titan Information Systems Corp. at 5 (filed March 1, 1995).

[15] See, e.g., Comments of Lockheed Martin at 4-10; Comments of Hughes Communications Galaxy at 31-47; Comments of Motorola at 19-25.

[16] See, e.g., Comments of CellularVision at 32-34; Comments of the Wireless Cable Association Int'l ("WCAI Comments") at 6-7.

II. THE COMMISSION SHOULD ALLOCATE A FULL 1,000 MHZ FOR LMDS AND AUCTION THE FULL BLOCK TO ONE LICENSEE IN EACH BTA

Bell Atlantic and many other commentors recommend that the Commission auction 1,000 MHz for LMDS as a single block.[17] This is the minimum amount of spectrum necessary for a commercially viable LMDS system to compete with other multichannel video systems.[18]

Only a few parties suggest that the Commission auction this spectrum in smaller blocks. These parties generally seek to use this spectrum for niche products[19] or to supplement their MMDS spectrum.[20] These suggestions should be rejected because they would undermine one of the main purposes of allocating spectrum for LMDS in the first place --i.e., to facilitate commercially viable competition in the multichannel video programming market.[21] In any event, if the Commission decides to auction this spectrum in multiple blocks, it should permit entities to aggregate such spectrum.

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[17] See Comments of Bell Atlantic at 3; Comments of PacificTelesis Wireless Broadband Services ("PTWBS Comments") at 1; Comments of BellSouth at 6; Comments of CellularVision at 3; Comments of TITAN at 2; Comments of Texas Instruments at 11; Comments of Nortel at 3; Comments of Hewlett Packard at 5-6; Comments of M3 Illinois Telecommunications Corp. ("M3ITC Comments") at 2; Comments of GHz Equipment at 2; Comments of ComTech at 2; Comments of End Gate at 4-5.

[18] See, e.g., PTWBS Comments at 1. Comments of BellSouth at 6.

[19] See Comments of Emc^3 at 6.

[20] See Comments of NYNEX at 5-6; WCAI Comments at 3.

[21] Rulemaking to Amend Parts 1 and 21 to Redesignate the 27.5 - 29.5 GHz Frequency Band and to Establish Rules and Policies for Local Multipoint Distribution Service, 8 FCC Rcd 557 at ¶ 3 (1993).

III. THE COMMISSION SHOULD NOT IMPOSE CROSS-OWNERSHIP RESTRICTIONS

In the Third Notice, the Commission sought additional comment on its tentative conclusion not to adopt restrictions on the ownership of LMDS licenses.[22] Nearly all of the commentors addressing this issue fully supported the Commission's tentative conclusion.[23]

Only two parties recommended that the Commission impose cross-ownership restrictions.[24] These parties base their recommendation on vague concerns that a single company might use wireline and wireless technology to inhibit competition in the delivery of multichannel video programming. These concerns are completely unfounded because it is inconceivable that any single firm could gain control over the multitude of technologies available to deliver video programming. For example, no single entity can acquire an exclusive right to build and operate wireline video dialtone systems in any service area.[25] There is therefore no reason to prevent any entities from using a mix of technologies to deliver multichannel video programming in an efficient manner.

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[22] Third Notice at ¶ 97.

[23] See Comments of Bell Atlantic at 5-7; WCAI Comments at 4; Comments of Ameritech at 2-3; PTWBS Comments at 1-2; Comments of BellSouth at 9-10; Comments of GTE at 8-9; Comments of Texas Instruments at 17-18; Comments of ComTech at 7; Comments of the Joint Parties at 3-5; and Comments of NCTA at 2-7.

[24] See Comments of Emc^3 at 7-8; M3ITC Comments at 3-4.

[25] See Telephone Company-Cable Television Cross-Ownership Rules, 10 FCC Rcd 244 at ¶¶ 54-55 (1994) (while LECs may lease cable drop wires, they may not acquire them, thereby "unreasonably restricti[ing] the access of any video programmer to leased cable drops.")

IV. IF THE COMMISSION DECIDES TO PROVIDE FOR NON-COMMERCIAL PROGRAMMING, IT SHOULD DO SO THROUGH BIDDING CREDITS.

Three sets of comments ask the Commission to make some provision for noncommercial programming in connection with the allocation of spectrum for LMDS.[26] These parties argue that LMDS technology could be used by noncommercial entities to deliver educational and informational programming to schools, libraries, homes, training centers, and day care facilities.

Bell Atlantic acknowledges that the public can benefit from the distribution of noncommercial programming of an educational or informational nature over LMDS. If the Commission decides to accommodate noncommercial programming, it should do so through bidding credits as suggested by Public Television.[27]

Under this proposal, bidders could commit to reserve a portion of their LMDS capacity for noncommercial programming of an educational or informational nature and then receive an equivalent bidding credit.[28] For example, if a bidder agreed to make five (5) percent of its LMDS capacity available for noncommercial programming, it would receive a five (5) percent bidding credit In exchange for the credit, the successful bidder would then make LMDS capacity available to noncommercial programmers at a reduced

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[26] See Public Television Comments; S & L Comments; and Comments of RioVision, Inc.

[27] See Public Television Comments at 11-13 See also Comments of RioVision at 2.

[28] Bell Atlantic recommends that the Commission limit the bidding credits to seven percent to avoid any abuse of this proposal.

rate that reflects the value of the bidding credit.[29] This would eliminate the need for noncommercial programming entities to invest in and maintain LMDS equipment.

The Commission should not set aside 150 MHz of spectrum (29.1 - 29.25 GHz) for non-commercial programming, as Public Television and RioVision suggest.[30] This proposal is arbitrarily based on the Commission's allocation of 150 MHz of noncontiguous spectrum for LMDS. It is not based upon any analysis of the needs of noncommercial programmers.

Moreover, these parties' requested set aside amounts to 15 percent of the total spectrum allocated to LMDS on a primary or co-primary basis. This set aside would be 200-300 percent more than the Congressional set aside for noncommercial programming

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[29] The Commission should permit the bidder to use the reserved capacity pending the actual use of such capacity for noncommercial programming of an educational or informational nature.

[30] See Public Television Comments at 3-7. The S & L Comments (at 3) note that "[a]n opportunity exists for the Commission to provide municipalities with some spectrum to meet their needs and over which they would have some control. There is no single method for doing so; there are many ways to accomplish the end."

in connection with Direct Broadcast Satellite service [31] Clearly, a set aside of 150 MHz out of 1,000 MHz would be unwarranted and arbitrary.

Respectfully submitted,

The Bell Atlantic Telephone Companies

By their Attorney

James G. Pachulski /DL

James G. Pachulski
1320 North Court House Road
Eighth Floor
Arlington, Virginia 22201
(703) 974-2804

Edward D. Young III
Of Counsel

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[31] 47 U.S.C. § 335(b)(1) ("The Commission shall require, as a condition of any provision, initial authorization, or authorization renewal for a provider of direct broadcast satellite service providing video programming, that the provider of such service reserve a portion of its channel capacity, equal to not less than 4 percent nor more than 7 percent, exclusively for noncommercial programming of an education or informational nature").