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Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of)
)
Amendment of Parts 21 and 74 of)
the Commission's rules With Regard)
to Licensing in the Multipoint)
Distribution Service and the)
Instructional Television Fixed)
Service for the Gulf of Mexico)

RM- _____

To: The Commission

**PETITION FOR RULE MAKING
OF
GULF COAST MDS SERVICE COMPANY**

GULF COAST MDS SERVICE COMPANY

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SUMMARY

Gulf Coast MDS Service Company ("Gulf Coast") requests the Commission to amend its rules to permit licensing of MDS spectrum in the Gulf of Mexico. Gulf Coast applauds the Commission for its recently concluded MDS auction proceeding and merely requests the Commission to apply the same MDS licensing policy to one additional BTA-like service area: the Gulf of Mexico.

Gulf Coast strongly believes that both industrial and individual communications users operating in the Gulf of Mexico would benefit significantly from the increased availability of digital communications over MDS channels in the Gulf of Mexico. Existing commercial services, including cellular, point-to-point microwave and VSAT offerings do not adequately meet all of the demand for digital services. In light of the high demand for increased communications capability in the Gulf of Mexico and the availability of MDS spectrum to meet that demand, Gulf Coast believes the Commission would create a win-win situation for users and the American taxpayer by licensing the Gulf of Mexico according to the framework established in the MDS proceeding, MM Docket No. 94-131.

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**PETITION FOR RULE MAKING
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Gulf Coast MDS Service Company ("Gulf Coast"), pursuant to Section 1.401 of the Rules and Regulations of the Federal Communications Commission ("FCC" or "Commission"), hereby respectfully submits this Petition for Rule Making ("Petition") requesting amendment of Parts 21 and 74 of the FCC's Rules and Regulations to permit licensing of Multipoint Distribution Service ("MDS") frequencies in the Gulf of Mexico.

I. BACKGROUND

1. Gulf Coast, a corporation organized under the laws of the State of Louisiana, is an affiliate of S & P Cellular Holding, Inc., a Delaware corporation. Gulf Coast desires to provide digital telecommunications, including voice and data services, to the oil and gas industry in the Gulf of Mexico utilizing spectrum from the band 2500-2690 MHz. This spectrum has favorable propagation characteristics for the rather limited number of structures which are appropriate for use as transmitter sites in the Gulf of Mexico.

2. The Commission recently concluded auctions of MDS licenses pursuant to the Report and Order ("Order") adopted in MM Docket No. 94-131, PP Docket No. 93-253 (released June 30, 1995). The significant amount of bidder participation in this auction is testament to the utility of MDS frequencies for both traditional video services and alternative services such as voice and data communications. This utility of MDS spectrum is further evidenced by the over \$200 million bid for licenses in 493 Basic Trading Areas ("BTA"), which included traditional BTAs plus American Samoa, Guam, the Northern Mariana Islands, the Virgin Islands and Puerto Rico.

3. Despite the fact that MDS licenses were awarded for the entire continental United States, all of Alaska, every Hawaiian Island, and such far-flung places as American Samoa, Guam, the Virgin Islands, Puerto Rico, and the Northern Mariana Islands, the Commission did not award a license for the Gulf of Mexico. In fact, the auction process was not designed to accommodate the award of a license for the Gulf of Mexico. However, Gulf Coast believes that two factors now make MDS licensing in the Gulf of Mexico particularly appropriate. First, the predominate oil and gas industries operating in the Gulf of Mexico manifest constantly increasing demand for reliable telecommunications capability in a variety of offshore environments and applications. Many of these telecommunications needs are not being met by currently authorized services in the Gulf of Mexico, such as point-to-point microwave, very small aperture terminal (VSAT) systems and cellular communications. Thus, the absence of incumbent licensees of the MDS and ITFS frequencies in the Gulf of Mexico render MDS frequencies well suited to meet pent-up demand for new communications services.

4. The second reason that MDS service is particularly compelling at this time is that, in recent years as demand for services has increased, there has been a corresponding

increase on the part of equipment manufacturers in the technical sophistication and versatility of equipment designed to operate on MDS (and ITFS) channels. Advancement in telecommunications technologies enables the provision of high quality digital services in the 2500-2690 MHz band. Licensing MDS channels would permit a Gulf of Mexico MDS licensee to offer currently unavailable communications services to the specialized industrial clientele that populate the Gulf of Mexico. These communications services would, in turn, enable industrial users to more efficiently conduct their energy exploration and production operations from places such as on oil drilling vessels and production platforms. The resultant increase in efficiency will benefit both the subscriber and the public-at-large.

II. DISCUSSION

A. **Filing Procedures and Service Rules**

5. Gulf Coast proposes that the Commission adopt for the Gulf of Mexico a licensing plan *which is identical* to that adopted in the MDS proceeding, MM Docket No. 94-131, PP Docket No. 93-253. Specifically, in the MDS proceeding, the Commission allocated one license for all MDS channels located in a geographic region. Order at ¶ 2. Gulf Coast

simply requests the Commission to adopt the same policy and provide a single MDS authorization for all MDS frequencies in the Gulf of Mexico.

1. Service Area Defined

6. Because the Rand McNally BTA map does not divide the Gulf of Mexico into BTAs or MTAs, Gulf Coast believes the most feasible licensing scheme is to recognize the Gulf of Mexico as one BTA-like service area. A similar designation is afforded to cellular radio service in the Gulf of Mexico, where the FCC created one geographic licensing area consisting of the entire Gulf of Mexico Service Area. See, 47 CFR § 22.911.

7. Moreover, fractioning the gulf of Mexico into multiple licensing regions would detract from the overall auction value of the band 2500-2690 MHz. The Gulf of Mexico is a unique environment; its population is transient and almost exclusively industrial. Only by licensing the Gulf of Mexico as a single region will the Commission's MDS licensee be able to offer affordable service to a sufficient number of users, many of whom work on transient drilling rigs, to justify the large scale investment in sites and

equipment and site rental necessary to offer MDS and similar services on a commercial basis.

2. Interference Criteria: Rights of Incumbents and the New MDS Licensee

8. Under the Commission's new MDS rules, the signals of a BTA authorization holder cannot interfere with those of any other BTA authorization holder. Specifically, the FCC selected as the limiting signal strength a power flux density value of -73 dBw/m^2 . Order at ¶ 53. The same policy should apply to the Gulf of Mexico licensee.

9. The Commission need not adopt new rules governing interference; rather, the Commission should apply its existing interference rules for protection of incumbent MDS licensees. The boundaries of the Gulf of Mexico should become the protected service area for the MDS licensee. See, Order at ¶ 24.^{1/} Gulf Coast proposes that the licensee

^{1/} GULFCOAST proposes that the service area boundaries of the Gulf of Mexico extend 200 miles out from the United States side of the border between Mexico and Texas on the Western side of the Gulf of Mexico, which is approximately 26 degrees North Latitude, and continue along the 200 mile limit from the coastline until the 200 mile limit reaches a point off Southwestern Florida at 26 degrees North Latitude. The boundary line then follows the latitudinal line eastward until it intersects with the coastline.

(continued...)

be issued an authorization for the entire Gulf of Mexico and be permitted to operate one or more MDS transmitting stations and signal boosters anywhere inside the service area, provided the specific engineering design meets the Commission's interference protection standards vis-a-vis all authorized or previously proposed MDS and ITFS facilities, and provided the MDS licensee complies with the limits established for signal strength along the perimeter of the geographic area. See, Order at ¶¶ 24, 50-53.

10. Just as in the MDS proceeding, those licensees and applicants that are authorized or proposed on or before June 15, 1995, including those stations that are subsequently modified, renewed, or reinstated, should be treated as incumbents for purposes of licensing and operations in the Gulf of Mexico. See, Order at ¶ 3.

1/ (...continued)

The proposed service area boundary on the landward side of the Gulf would be the coastline, as defined by the Common Carrier Bureau, in reliance upon both the Submerged Lands Act, 43 U.S.C. §§ 1301-1315 and Article 7 of the Convention on the Territorial Sea and the Contiguous Zone. Specifically, "coastline" is defined by the Commission as "the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters." Order on Reconsideration, 1 FCC Rcd 511, 513 (1986). "Inland waters" are defined by the Commission to include all harbors and bays along the Texas, Louisiana, Alabama, Mississippi, and Florida coasts, and the islands along the circumference of the Gulf, including the Chandeleur Islands and those surrounding the Mississippi Sound. Order on Reconsideration, 1 FCC Rcd 511, 513 (1986).

Incumbents in the MDS proceeding were afforded the ability to continue providing interference-free service to subscribers within a 35-mile area; the same protection of incumbents would apply in the Gulf of Mexico and along its boundaries with land-based BTAs. The Commission should also allow the Gulf of Mexico MDS licensee to negotiate interference protection rights with licensees in neighboring BTAs in the same way that the rules permit such agreements on land. Order at ¶ 3.

11. In its Order, the Commission noted that holders of authorizations within 50 miles of the Mexican border may only operate on MDS channels pursuant to the restrictions in international agreements. Order at ¶ 55. The same general restriction should apply to the Gulf of Mexico licensee when operating MDS facilities within 50 miles of the Mexican border.

3. The Application Process

12. Like the MDS proceeding, the holder of the Gulf of Mexico service area authorization should be permitted to file one or more long-form applications seeking authority to construct stations anywhere inside the service area on usable MDS channels, provided the specific

engineering design meets the Commission's interference protection standards and signal strength limits. Thus, a separate conditional station license should be awarded for each single channel or channel group at each site location. The holder of an MDS authorization would file a long-form application for each usable single channel or channel group at each transmitter site within the licensee's service area and would have a later opportunity to file amendments to correct any defects in the application. See, Order at ¶ 39. Just as in the MDS proceeding, individual station licenses that are a part of the Gulf of Mexico service area will not have a uniquely associated protected service area; instead, the common protected service area of all individual stations within the Gulf of Mexico service area authorization will be the boundary of the Gulf of Mexico. Order at ¶ 39.

13. Only the MDS authorization holder would be qualified to submit any new application for MDS use of available ITFS frequencies within the service area in accordance with 47 C.F.R. §§ 74.990(a), 74.991. Order at ¶ 41.

4. Construction Requirements

14. The construction period for the individual stations should be the five-year build-out date which runs from the grant date of the first license. Order at ¶ 43. The holder of the MDS license should submit a showing to the Commission five years from the date of issuance of its authorization that the licensee is providing a signal level sufficient to provide adequate service to approximately two-thirds of the population of the area within its control in the licensed service area. Order at ¶ 43.

15. When the portion of the system represented by a particular long-form application is constructed and ready to begin operation, the holder of the authorization should file a corresponding certification of completion of construction. The license term for those stations should be the same ten-year term as MDS stations licensed in the MDS proceeding. See, Order at ¶ 39.

16. In order to facilitate the development of successful MDS licensees, the MDS rules allow licensees to assign or transfer their entire service areas, or partitioned portions of it, to incumbents or other parties. Order at ¶ 44. Similarly, the rules permit a licensee to

partition portions of its service area and enter into contracts with eligible parties which permit such parties to file long-form applications for the usable MDS channels within that partitioned area. In addition, a holder of a license is permitted to add to its service area by acquiring a partitioned service area from the holder of an adjacent BTA. Order at ¶ 46. The same rules should apply to the Gulf of Mexico licensee. As the Commission noted, these rules "promote the most efficient use of the spectrum and encourage participation by a wide variety of entities. . . ." Order at ¶ 47.

5. Alternative Uses of MDS Frequencies

17. The Commission's Order noted that the principal use of MDS frequencies is wireless cable service. Order at ¶ 59. In addition, the Commission permitted MDS licensees to use "MDS frequencies for other kinds of services." Order at ¶ 59. Similarly, the Commission's Order on Reconsideration reaffirmed this policy. Thus, the MDS licensee in the Gulf of Mexico should be entitled to provide video services and "other kinds of services pursuant to 47 CFR § 21.903(b)." Order at ¶ 59.

B. License Allocation Method

18. Section 309(j) of the Omnibus Budget Reconciliation Act of 1993 gave the Commission authority to employ competitive bidding procedures to choose from among mutually exclusive applications for licenses in commercial services. As noted previously, the Commission received mutually exclusive applications for MDS licenses and recently auctioned the licenses available in the MDS proceeding. Gulf Coast requests the Commission to afford identical treatment to the MDS license available in the Gulf of Mexico service area. Application of these existing procedures would enable potential applicants to participate in an auction pursuant to rules and electronic auction software which already exist and have proven to be effective in the recent MDS auction. This process would involve minimal cost on behalf of the Commission as well. In fact, the Commission in the MDS proceeding noted that "Given . . . the declining cost of conducting simultaneous multiple round bidding, we choose this auction method for use in MDS." Order at 84.

19. Auctions are clearly the best method for quickly and efficiently awarding exclusive licenses from among competing applications. In the unlikely event that no

mutually- exclusive applications are filed for provision of MDS in the Gulf of Mexico, the Commission could simply award the license to the applicant pursuant to Section 21.927 of the Commission's rules. Where mutually-exclusive applications are filed, the Commission could readily auction the license to the highest bidder. Under either scenario, service to the public would commence in a timely manner and the public benefit of such MDS facilities could be realized in a matter of months, not years.

III. CONCLUSION

20. In recent years, the demand for video, data, and voice communications in the Gulf of Mexico has increased without any corresponding increase in the availability of communications services to meet those needs. To permit individuals and businesses to realize the full benefits of advances in commercial communications technology without undue delay, the Commission's MDS rules should be amended to permit licensing of the Gulf of Mexico service area.

21. In this Petition, therefore, Gulf Coast urges the Commission to initiate an early rule making proceeding aimed at amending Parts 21 and 74 of the Rules and Regulations to specifically provide users in the Gulf of Mexico with the

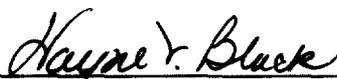
option of employing MDS channels on a regular basis. Gulf Coast proposes that one MDS license for the Gulf of Mexico be allocated in accordance with the Commission's existing MDS rules and that, if mutually-exclusive applications are filed, the Commission auction that license to the highest bidder pursuant to the auction procedures adopted in the MDS proceeding.

WHEREFORE, THE PREMISES CONSIDERED, Gulf Coast MDS Service Company respectfully urges the Federal Communications Commission to grant this Petition for Rule Making and promptly institute a rule making proceeding consistent with the proposals set forth in the attached Appendix.

Respectfully submitted,

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Dated: May 21, 1996

APPENDIX

I. Part 21 of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

§ 21.2 Definitions.

As used as follows:

* * * *

Basic Trading Area (BTA). The geographic areas by which the Multipoint Distribution Service is licensed. BTA boundaries are based on the Rand McNally 1992 Commercial Atlas and Marketing Guide, 123rd Edition, pp. 36-39, and include ~~six~~ seven additional BTA-like areas as specified in § 21.924(b).

§ 21.924 Service Areas

(a)

(b) The following additions will be available for licensing separately as BTA-like areas: American Samoa; Guam; Northern Mariana Islands; San Juan, Puerto Rico; Mayaguez/Aguadilla-Ponce, Puerto Rico; the Gulf of Mexico, and the United States Virgin Islands. The Gulf of Mexico service area boundary extends 200 miles out from the United States side of the border between Mexico and Texas on the Western side of the Gulf of Mexico, which is approximately 26 degrees North Latitude, and continues along the 200 mile limit from the coastline until the 200 mile limit reaches a point off Southwestern Florida at 26 degrees North Latitude. The boundary line then follows the latitudinal line eastward until it intersects with the coastline. The service area boundary on the landward side of the Gulf is the coastline, which is defined as the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters.