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

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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)
Reallocate the 29.5-30.0 GHz Frequency Band,)
to Establish Rules and Policies for Local)
Multipoint Distribution Service and for)
Fixed Satellite Services)

CC Docket No. 92-297

**COMMENTS OF
UNITED STATES TELEPHONE ASSOCIATION**

I. INTRODUCTION

The United States Telephone Association ("USTA") respectfully submits these comments in response to the Commission's *First Report and Order and Fourth Notice of Proposed Rulemaking ("Fourth Notice")*.¹ USTA is the major trade association of the local exchange carrier ("LEC") industry with over 1,000 members.

In the *Fourth Notice*, the Commission has designated the 27.5-28.35 GHz, 29.1-29.35 GHz bands and proposed the 31.0-31.3 GHz band for local multipoint distribution service ("LMDS"). The Commission envisions that "LMDS providers will offer facilities-based competition to

¹ CC Docket No. 92-297, FCC 96-311, released July 22, 1996.

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traditional cable and telephone carriers...’’² The Commission seeks comment on the eligibility of LECs and cable operators to obtain LMDS licenses in the regions that they serve.³ According to the *Fourth Notice*, the Commission’s concern is how best to authorize LMDS services in compliance with the competitive provisions of the 1996 Act.⁴

The Commission should resist calls to prohibit open eligibility and competition for LMDS licences. USTA opposes restrictions on participation in spectrum auctions intended for the deployment of advanced telecommunications services.⁵ Vigorous competition for the right to use LMDS technology is best achieved through an open auction process. USTA urges the Commission to affirm its earlier conclusions in support of open eligibility.

II. THE COMMISSION HAS CONSISTENTLY SUPPORTED OPEN ELIGIBILITY IN SPECTRUM ALLOCATIONS

The Commission has consistently rejected arguments favoring restrictions on LECs competing for other licenses to provide services in their markets. For example, the Commission chose open eligibility for awarding Multichannel Multipoint Distribution Services (“MMDS”),⁶

² *Fourth Notice* at ¶97.

³ *Id.* at ¶105.

⁴ *Id.*

⁵ See, e.g., *USTA’s Comments* at 5, December 30, 1993; *Amendment of the Commission’s Rules to Establish New Personal Communications Services, Memorandum Opinion and Order*, GEN Docket No. 90-314, FCC 94-144 at ¶102, n.147, 9 FCC Rcd 4957, 4998, released June 13, 1994

⁶ See *Amendment of Parts 21 and 74 of the Commission’s Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service, Report and Order*, 10 FCC Rcd 9569 (1995).

General Wireless Communications Service (“GWCS”),⁷ and Mobile Satellite Service (“MSS”)⁸ licenses. As the Commission stated in its GWCS Order, “Opening the GWCS market to a wide range of applicants will permit and encourage entrepreneurial efforts to develop new technologies and services, while helping to ensure the highest and best use of this spectrum.”⁹ Most recently, the Commission determined that amendments to existing rules were necessary to allow providers of Personal Communications Services (“PCS”), Commercial Mobile Radio Service (“CMRS”), Specialized Mobile radio (“SMR”), and other wireless services greater flexibility in service offerings to meet consumer demand.¹⁰ According to the Commission “Rather than limit the flexibility of carriers ... we prefer to encourage innovation and experimentation through a broader, more flexible standard.”¹¹ USTA believes that the Commission’s reasoning stated in the GWCS and CMRS Orders supports open eligibility for the LMDS auctions.

⁷ See *Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, Second Report and Order*, 11 FCC Rcd 624 (1995).

⁸ See *Amendment of the Commission’s Rules to Establish Rules and Policies Pertaining to a Mobile Satellite Service in the 1610-1626.5/2483.5-2500 MHz Frequency Bands*, 9 FCC Rcd 5936 (1994).

⁹ See 11 FCC Rcd 624, 649 ¶58.

¹⁰ See *Amendment of the Commission’s Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Services, First Report and Order and Further Notice of Proposed Rulemaking*, WT Docket No. 96-6, FCC 96-283, released August 1, 1996.

¹¹ *Id.* at ¶19.

III. THE CURRENT RECORD SUPPORTS THE COMMISSION'S CONCLUSIONS FAVORING OPEN ELIGIBILITY FOR LMDS AUCTIONS

After an extensive review of the eligibility issue, the Commission previously determined that there was no basis for excluding incumbent telephone and video programming providers from the opportunity to provide LMDS in their geographic regions.¹² To date, the Commission has received suggestions to impose restrictions on LECs and cable providers regarding their participation in LMDS auctions.¹³ Notwithstanding recent efforts by those parties wishing to impose barriers to open eligibility and competition,¹⁴ there is no basis on which the Commission should prohibit LECs from competing for LMDS licenses. Recent comments filed by parties opposing open eligibility are not new, are inimical to competition, are discriminatory, and have been previously reviewed and rejected by the Commission in this proceeding. LECs should be given the opportunity to participate in the LMDS auctions because (1) as new entrants, they can use LMDS technology to provide competitive video services (2) they cannot use LMDS to inhibit local exchange competition, (3) current statutes and regulations do not bar their participation in LMDS auctions, and (4) they have the resources, expertise, and commitment necessary to deploy LMDS and integrate LMDS into their operations. Participation by LECs in LMDS creates additional competition in the voice and video markets.

¹² See *Third Notice*, 11 FCC Rcd 53 (1995); *Fourth Notice* at ¶108.

¹³ See *Fourth Notice* at ¶114.

¹⁴ *Id.* at ¶¶120-124.

LECs have been participating, through experimental and developmental radio licenses, in LMDS technology for years. Regulatory policy that would bar LECs from participation in open auctions for licenses in their markets would be anti-competitive.

IV. OPEN ELIGIBILITY FOR LMDS LICENSES FURTHERS THE GOALS OF COMPETITION ESTABLISHED BY THE 1996 ACT

USTA supports open eligibility for any interested party prepared to bid on LMDS licenses. The centerpiece of the 1996 Act¹⁵ is competition in the telecommunications and video programming markets. The Commission's objectives should mirror those contained in the 1996 Act: "... to provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition"¹⁶ Any effort to prohibit LECs from participating in auctions for LMDS licenses in their geographic regions would be contrary to Congressional intent. Moreover, the 1996 Act reversed prior federal policy excluding LECs from the video marketplace, and actively encourages entry by the telephone industry into the video programming market to provide competition to the entrenched cable industry. In the Act, Congress specified four (4) options that LECs could pursue to provide video programming: (1) radio-based systems (2) common carrier

¹⁵ See *Telecommunications Act of 1996*, P.L. 104-104, 110 Stat. 56, February 1, 1996.

¹⁶ See *Telecommunications Act of 1996, Conference Report*, S. Rep. 104-230, *Joint Explanatory Statement* at 113, February 1, 1996.

video systems; (3) cable-based video programming; and (4) open video systems.¹⁷

Congress also stated that LECs provide effective competition for cable incumbents when LECs offer video services “by any means” other than by direct-to-home satellite services.¹⁸ In the Conference Report, the term “by any means” includes LMDS.¹⁹ Clearly, Congress intended that LMDS serve as an option that LECs can pursue to provide video programming. In addition, the adoption by the Commission of any proposal to restrict participation in the LMDS auction would unfairly discriminate against LECs. There is no language in the 1996 Act prohibiting incumbent providers of telephony from actively pursuing LMDS as an alternative approach to providing services in their geographic regions. Equally important, rapid deployment of LMDS is most likely to occur through the expertise, economies of scope, integration of existing infrastructure, and financial resources of LECs.

In many rural communities, the incumbent LEC may well be the only entity interested in providing LMDS. Any prohibition on these companies participating in auctions for LMDS licenses may forestall the development of LMDS in these communities. Under a prohibition, the unintended anomaly of having no deployment of LMDS in rural communities would exist because the incumbent telephone provider would be ineligible to participate in the auction.

The Commission should also promote the active participation of all parties interested in LMDS auctions because of the potential benefits to the United States Treasury. Given that only

¹⁷ See *Telecommunications Act of 1996* §651, 47 U.S.C. 571(a)(1-4) (1996).

¹⁸ *Id.* Conference Report, S. Rep. 104-230 at 170.

¹⁹ *Id.*

one license will be available for each community,²⁰ the Commission can anticipate that an active bidding process will take place. Suggestions by MCI and WebCel²¹ to restrict incumbent LECs from participating in the auctions for LMDS licenses in their markets will have the unfortunate effect of limiting potential revenues, which clearly would not be in the public interest. Open eligibility will lead to market-based valuation of LMDS licenses, while maximizing the return to the United States Treasury. The 1996 Act encourages the Commission to open the LMDS auctions to vigorous competition.

It is also important to note that there are many competitors currently providing, or planning to provide, voice and video services in every conceivable manner. Competition in local, long distance, and video programming is expanding. In the video services market competitors include cable, DBS, MMDS, and perhaps OVS providers. The telephony market includes competition among I ECs, CAPs, IXCs, CMRS and PCS. Moreover, the Commission should not be in the business of choosing winners and losers. Policies should be developed that ensure that competition in the marketplace, and not regulation, determines winners and losers. Under the circumstances, prohibiting incumbent LECs from bidding on LMDS licenses in their markets is the antithesis of open entry in an era when vigorous competition is the intended consequence of the 1996 Act

²⁰ *Fourth Notice* at ¶106.

²¹ *Id.* at ¶¶120-124.

V. CONCLUSION

USTA opposes regulations that would restrict eligibility for participation in the LMDS auctions. USTA members have participated actively in the Commission's prior review of the eligibility question regarding the deployment of LMDS. The Commission has held that there is no basis on which to prohibit LECs from becoming LMDS licensees in their local communities. Passage of the 1996 Act supports participation by LECs in allocation of local LMDS licenses. Individual market segments should not be disadvantaged by over-reaching regulatory policies that unfairly discriminate against any entity interested in participating in the LMDS auctions. Open eligibility and competition for LMDS licenses will lead to vigorous competition and ensure that well-qualified entities have the opportunity to expedite deployment of LMDS. Consumers are the ultimate beneficiaries of open eligibility because of the availability of new service options, and revenues sent to the United States Treasury reflecting the full valuation of LMDS licenses.

Respectfully submitted,

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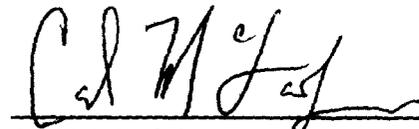
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August 12, 1996

CERTIFICATE OF SERVICE

I, Carl McFadgion, do certify that on August 12, 1996 copies of the Comments of the United States Telephone Association were either hand-delivered, or deposited in the U.S. Mail, first-class, postage prepaid to the person on the attached service list.



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