

III. CONCLUSION.

WHEREAS, for the reasons explained above, the Wireless Cable Commenters request that the Commission deny the proposal advanced by Gulf Coast MDS.

Respectfully submitted,

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By: 

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November 18, 1996

**CERTIFICATE OF SERVICE**

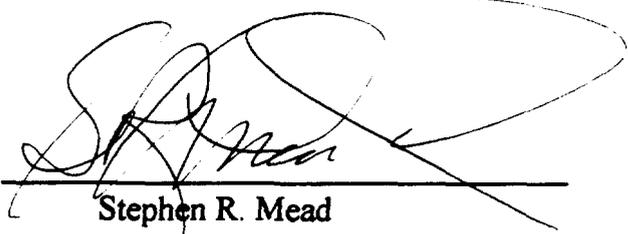
I, Stephen R. Mead, hereby certify that the foregoing Opposition to Petition for Rule Making was served this 18th day of November, 1996, by depositing a true copy thereof with the United States Postal Service, first-class postage prepaid, addressed to the following:

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December 17, 1996

*VIA HAND DELIVERY*

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
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Washington, DC 20554

*Re: 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 — DA 96-1721*

Dear Mr. Caton:

We are writing on behalf of Wireless One, Inc., ("Wireless One") to respond to the Reply Comments submitted by Gulf Coast MDS Service Company ("Gulf Coast MDS") in this proceeding and to correct certain distortions by Gulf Coast MDS of Wireless One's position.

Gulf Coast MDS would have the Commission believe that Wireless One is opposed to the creation of a Gulf of Mexico Basic Trading Area ("BTA") because it would impinge upon the ability of Wireless One to provide service outside of the BTAs Wireless One secured at auction. That is simply not true, as even a cursory review of Wireless One's filing illustrates. Wireless One certainly does not deny that it is providing service within the Gulf of Mexico. What Gulf Coast MDS conveniently ignores, however, is that Wireless One employs channels for systems that have been secured from Instructional Television Fixed Service ("ITFS") and "incumbent" Multipoint Distribution Service ("MDS") stations located near the Gulf of Mexico coastline. These stations are free to transmit in excess of -73 dBw/m<sup>2</sup> at BTA boundaries, so long as they do not exceed that power flux density limit at the boundary of their protected service areas.<sup>1/</sup> And, these incumbent MDS and ITFS stations all enjoy the benefits of a circular

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<sup>1/</sup> *Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Filing Procedures in the Multipoint Distribution Service and Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act — Competitive Bidding*, 10 FCC Rcd 9589, 9618 (1995). Thus, Gulf Coast MDS is absolutely wrong when it cavalierly asserts that Wireless One was "never authorized to transmit signals which exceed

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protected service area with a radius of 35 miles — a protected service area that often extends far into the Gulf of Mexico. Thus, Gulf Coast MDS or any other party that were to win a Gulf of Mexico BTA auction would be under an absolute obligation to afford 45 dB cochannel and 0 dB adjacent channel desired-to-undesired signal ratio protection to those protected service areas that overlap the Gulf.<sup>2/</sup> In other words, the ability of Wireless One to continue to serve within the Gulf of Mexico is virtually unaffected by whether or not the Commission establishes a Gulf of Mexico BTA-like MDS service area.<sup>3/</sup>

In fact, as Wireless One made clear in its initial comments in this proceeding, Wireless One's opposition to the establishment of a Gulf of Mexico BTA stems from a concern that it would adversely impact the ability of Wireless One and other holders of Gulf coast BTA authorizations to serve subscribers within their BTAs. As Wireless One stated in its initial filing:

under Gulf Coast MDS's proposal, wireless cable systems along the Gulf coast might have to make substantial modifications that would reduce their ability to provide service to the 16.7 million people residing in Gulf coast BTAs, just to meet their interference protection obligations under the existing rules to a Gulf of Mexico BTA authorization holder. The wireless cable systems that the Wireless Cable Commenters are operating and developing have been designed to optimize coverage over land. Since those systems have been designed in an environment without a Gulf of Mexico BTA-like service area, they have been designed without regard to the potential for interference to a Gulf of Mexico BTA. Were the Commission to establish a Gulf of Mexico BTA-like service area and mandate

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the Commission's signal strength limit of -73dBw/m<sup>2</sup> at the perimeters of [its] BTAs." See Gulf Coast MDS Reply, at 4-5.

<sup>2/</sup> See *id.*, 10 FCC Rcd at 9617 ("BTA authorization holders will be required to design their transmitting facilities to protect points along the 35-mile circles and points within the protected service area of incumbents' licensed stations, conditionally licensed stations, or previously proposed applications.").

<sup>3/</sup> In this regard, the Commission should correct Gulf Coast MDS's mistaken assertion that "the Commission's MDS service rules simply do not permit an MDS licensee to extend service beyond its BTA." See Gulf Coast MDS Reply, at 6. As demonstrated above, an incumbent MDS licensee's service area is unaffected by BTA boundaries. Moreover, nowhere in the Commission's rules is there any prohibition restricting an MDS station licensed to a BTA authorization holder from serving receive sites outside the BTA. To the contrary, it appears that so long as the Commission's interference protection rules are met, there is no restriction whatsoever on the locations that can be served.

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that systems in BTAs bordering the Gulf of Mexico afford the level of interference protection contemplated by Section 21.938 of the Rules, MDS stations comprising the Gulf coast wireless cable systems could be forced under Section 21.938 to incur substantial interference-elimination expenses and could be required under Section 21.939 of the Rules to make significant modifications to their stations (including use of directional antennas that reduce coverage, the use of exaggerated beam tilts that limit the radio horizon, decreases in power that reduce coverage and changes in antenna location to less favorable positions) that would substantially jeopardize their ability to provide wireless cable services over land.<sup>4/</sup>

Gulf Coast MDS's Reply Comments simply ignore these arguments advanced by Wireless One.

Finally, in its initial filing in this proceeding Wireless One demonstrated that Gulf Coast MDS has failed to document any demand for services in the Gulf of Mexico that cannot be met through other spectrum. Gulf Coast MDS does nothing in its Reply Comments to respond, other than to provide the Commission with generalities and copies of articles regarding Gulf of Mexico oil and gas operations that have nothing to do with the area's telecommunications needs. Interestingly enough, however, two weeks ago Petroleum Communications, Inc., which identifies itself as an "affiliate" of Gulf Coast MDS, submitted comments to the Commission in General Docket No. 96-228, *Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service (WCS)*, in which it represented to the Commission that the oil and gas industry "requires at least 49 MHz of spectrum for both the transmit and receive channels with 84 MHz of separation between the transmit and receive channels."<sup>5/</sup> Suffice it to say that the MDS channels that would be available in the Gulf of Mexico pursuant to a BTA authorization would not meet that criteria. Thus, the question remains — is there really any documented need for the use of MDS channels to satisfy the communications needs of the oil and gas industry in the Gulf of Mexico?

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<sup>4/</sup> Opposition of Wireless One, Inc. and Heartland Wireless Communications, Inc. to Petition For Rulemaking, at 14-15 (filed Nov. 18, 1996)..

<sup>5/</sup> Comments of Petroleum Communications, Inc., GN Docket No. 96-228, at 5 (filed Dec. 4, 1996). For the convenience of the Commission's staff, a copy of that filing is enclosed.

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In conclusion, for the reasons set forth both above and in Wireless One's initial opposition, Wireless One reiterates its request that the Commission deny Gulf Coast MDS's proposal for the creation of a Gulf of Mexico BTA-like MDS service area.

Respectfully submitted,



Paul J. Sinderbrand  
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Enclosure

cc: Charles E. Dziejic  
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December 30, 1996

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OFFICE OF SECRETARY

**VIA HAND DELIVERY**

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, DC 20554

Re: *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 — DA 96-1721*

Dear Mr. Caton:

Once again, we are writing on behalf of Wireless One, Inc., ("Wireless One") to correct further distortions by Gulf Coast MDS Company ("Gulf Coast MDS") of Wireless One's position in this proceeding.

At the outset, Wireless One seeks to clarify any potential confusion caused by Gulf Coast MDS's December 26, 1996 filing by restating the focus of Wireless One's opposition. Contrary to Gulf Coast MDS's assertions, this proceeding is not about Wireless One's ability to serve receive sites within the Gulf of Mexico. The few military vessels that Wireless One does serve represent a minuscule revenue stream for Wireless One — the service is provided more as an accommodation to the armed forces than anything else. Moreover, Gulf Coast MDS's most recent filing totally ignores the point we made in our December 17<sup>th</sup> letter: Wireless One employs channels for systems that have been secured from Instructional Television Fixed Service ("ITFS") and "incumbent" Multipoint Distribution Service ("MDS") stations located near the Gulf of Mexico coastline. These stations are free to transmit in excess of -73 dBw/m<sup>2</sup> at BTA boundaries, so long as they do not exceed that power flux density limit at the boundary of their protected service areas. And, these incumbent MDS and ITFS stations all enjoy the benefits of a circular protected service area with a radius of 35 miles — a protected service area that often extends far into the Gulf of Mexico. Once again, Gulf Coast MDS simply ignores the fact that Wireless One's ability to serve within the Gulf of Mexico is virtually unaffected by whether or

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not the Commission establishes a Gulf of Mexico BTA-like MDS service area.

In fact, as Wireless One made clear in its initial comments in this proceeding and again in its December 17<sup>th</sup> letter, Wireless One's opposition to the establishment of a Gulf of Mexico BTA stems from a concern that it would adversely impact the ability of Wireless One and other holders of Gulf coast BTA authorizations to serve subscribers within their BTAs. This is not, as Gulf Coast MDS would have the Commission believe, a situation where "Wireless [One] wants something for nothing." To the contrary, all Wireless One wants is what it has already paid for at auction. For all its rhetoric, Gulf Coast never comes to grips with the fundamental thrust of Wireless One's position — *now that the Commission has conducted an auction for MDS BTA authorizations and Wireless One and others have valued BTAs bordering the Gulf of Mexico on the basis that their would be no BTA-like authorization issued for the Gulf of Mexico, adoption of Gulf Coast MDS's petition would be fundamentally unfair.*

Under Gulf Coast MDS's proposal, wireless cable systems along the Gulf coast might have to make substantial modifications that would reduce their ability to provide service to the 16.7 million people residing in Gulf coast BTAs, just to meet their obligation under Section 21.938 to protect a new Gulf of Mexico BTA authorization holder from interference. The wireless cable systems that the Wireless One and others are operating and developing have been designed to optimize coverage over land. Since those systems have been designed in an environment without a Gulf of Mexico BTA-like service area, they have been designed without regard to the potential for interference to a Gulf of Mexico BTA. Were the Commission to now, a year after the MDS auction, establish a Gulf of Mexico BTA-like service area and mandate that systems in BTAs bordering the Gulf of Mexico afford the level of interference protection contemplated by Section 21.938 of the Rules, MDS stations comprising the Gulf coast wireless cable systems could be forced under Section 21.938 to incur substantial interference-elimination expenses and could be required under Section 21.939 of the Rules to make significant modifications to their stations (including use of directional antennas that reduce coverage, the use of exaggerated beam tilts that limit the radio horizon, decreases in power that reduce coverage and changes in antenna location to less favorable positions) that would substantially jeopardize their ability to provide wireless cable services over land.

The fundamental flaw in Gulf Coast MDS's proposal is that Gulf Coast MDS refuses to come to grips with its own lack of diligence in proposing the establishment of a Gulf of Mexico BTA-like service area. Throughout this proceeding, Gulf Coast MDS has harped on the fact that it is not proposing any change to the Commission's interference protection rules, as if that alone resolves any potential problems arising out of its proposal. Had Gulf Coast MDS timely advanced its proposal (*i.e.*, suggested the establishment of a Gulf of Mexico BTA-like service area when the Commission first considered auctioning MDS licenses), that position might be

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correct. Wireless One and others would have known that winners of the Gulf coast BTAs would have less flexibility in system design, and would have bid during the MDS auction accordingly. However, for reasons that have never been adequately explained on the record, Gulf Coast MDS waited until after the Commission conducted the MDS auction to first propose a Gulf of Mexico BTA-like service area. Thus, Gulf Coast MDS bears the burden of demonstrating that its untimely proposal is fair to the Gulf coast BTA authorization holders. That is a burden Gulf Coast MDS has yet to carry.

Finally, Wireless One must respond to Gulf Coast MDS's assertion that Wireless One's December 17<sup>th</sup> letter filing was "untimely." Although Wireless One's letter was submitted after the formal pleading cycle had closed, that fact is of no moment. Wireless One's December 17<sup>th</sup> letter was not a formal pleading. Rather, it was an informal presentation of the sort that is both contemplated and permitted under the Commission's *ex parte* rules. Because the letter was served upon counsel for Gulf Coast MDS, it did not constitute an *ex parte* presentation and was thus entirely proper. See 47 C.F.R. §1.1202(b)(1). See also *Elkhart Telephone Co. v. Southwestern Bell Telephone Co.*, 11 FCC Rcd 1051, 1053 n.32 (1995)(finding that although Commission rule expressly banned formal replies to particular opposition, a response to that opposition was permissible as an informal filing because it was served upon opposing party and thus did not violate *ex parte* rules); *Applications of Dial Page, Inc. and Nextel Communications, Inc.*, 1 CR 1269, 1277-78 (P&F 1995).

In conclusion, for the reasons set forth both above, in Wireless One's December 17<sup>th</sup> letter and in Wireless One's initial opposition, Wireless One reiterates its request that the Commission deny Gulf Coast MDS's proposal for the creation of a Gulf of Mexico BTA-like MDS service area.

Respectfully submitted,



Paul J. Sinderbrand  
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cc: Charles E. Dziejic  
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I, Sheryle Price, hereby certify that the foregoing Reply Comments were served this 4th day of August 1997, by depositing a true copy thereof with the United States Postal Service, first-class postage prepaid, addressed to the following:

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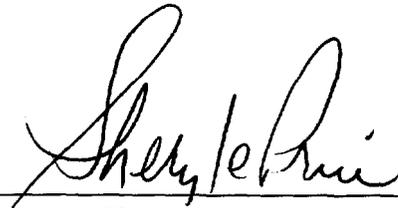
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