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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Paul J. Sinderbrand
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October 8, 1999

Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, NW
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 – RM-9718*

Dear Ms. Salas:

I am writing on behalf of the Wireless Communications Association International, Inc. ("WCA") to correct several mischaracterizations of WCA's positions on the issues pending in this proceeding that are contained within reply comments submitted recently by other parties.

So that there is no confusion, WCA's positions, in a nutshell, are that: (1) the Commission should not even be contemplating the auctioning of Gulf of Mexico MDS/ITFS licenses until it is demonstrated that a demand exists which cannot be met through other, already allocated, spectrum;^{1/} (2) if the Commission does move forward with licensing MDS/ITFS use in the Gulf, it must adopt a regulatory regime which fully protects land-based systems near the Gulf from interference and permits those land-based systems the technical flexibility they need to deploy advanced communications systems without being precluded by overly-restrictive rules designed to protect the new Gulf licenses; and (3) any auction rules must provide existing BTA authorization holders a fair opportunity to secure MDS/ITFS spectrum rights for portions of the Gulf adjoining their current service areas.^{2/}

Relating to WCA's first point, it is telling that no party to this proceeding has presented any hard evidence that a demand exists for spectrum in the Gulf that cannot be met with spectrum that is already allocated for use in the Gulf. While PetroCom License Corp. ("PetroCom") goes to great

^{1/}See Opposition of Wireless Communications Assoc. Int'l to , RM-9718, at 5 (filed Sept. 10, 1999)[hereinafter cited as "WCA Opposition"].

^{2/}See *id.* at 29.

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length to distinguish the capabilities of an MDS/ITFS system from a cellular telephone system, it provides no meaningful analysis suggesting that spectrum alternatives other than cellular telephone are incapable of meeting whatever need for new services may exist in the Gulf.^{3/} Rather, PetroCom resorts to distorting the record, stating that “WCA’s ‘Opposition’ makes it clear that its members would like very much to provide service” to the Gulf.^{4/} In fact, WCA’s members have expressed no particular interest in serving areas in the Gulf beyond that already authorized, and WCA has never suggested otherwise. To the contrary, although WCA and its members submitted extensive comments in the Commission proceedings leading up to the auction of MDS BTA authorization, it is telling that not one party to that proceeding specifically advocated the creation of a licensing area for the Gulf.

In a similar effort to bolster its own unsubstantiated claim that a demand for the use of MDS and ITFS frequencies exists in the Gulf, Rig Telephones Inc. dba Datacom (“Datacom”) asks the rhetorical question “If WCA truly believes that there is no demand for these frequencies in the Gulf, then why is it so concerned that its own members might not be favored in an auction?”^{5/} The answer to that question is simple. As noted above, WCA is concerned that the Commission might adopt interference protection rules for Gulf of Mexico operations that are not adequately protective of the

^{3/}See Reply Comments of PetroCom License Corp., RM-9718, at 3 (filed Sept. 27, 1999)[hereinafter cited as “PetroCom Reply Comments”]. Although WCA provided a list of potential spectrum alternatives in its initial comments, the only discussion of those alternatives is found in the following sentence by PetroCom: “A cellular network does not fit the bill, nor do any of the other services mentioned by WCA.” *Id.* at 2-3.

^{4/}*Id.* at 2. In its Opposition, WCA cited to a report by Dr. Larry Darby that PetroCom had submitted in an earlier proceeding concluding that an increase in the number of licensed services in the Gulf would not serve the public interest. See WCA Opposition, at 7-8, quoting Darby, “Competition in Wireless Telecom Services in the Gulf of Mexico,” at 3, submitted with Comments of Petroleum Communications, Inc., WT Docket No. 97-112 (filed July 2, 1997). In its reply, PetroCom attempts to deflect the import of that report by claiming that “the Commission in that docket specifically requested a demand analysis to assist it in allocating CMRS in the Gulf.” PetroCom Reply Comments, at 3 n.4. While that is true, Dr. Darby’s study examined in great deal the fixed service alternatives available in the Gulf, recognizing the cross-elasticity of demand between fixed and mobile services in the Gulf market. Thus, the fact that the proceeding addressed mobile issues does not change the fact that Dr. Darby’s conclusions were based on an analysis of both the fixed and mobile markets.

^{5/}Reply Comments of Rig Telephones Inc. dba Datacom, RM-9718, at 5 (filed Sept. 27, 1999)[hereinafter cited as “Datacom Reply Comments”].

rights of those who currently hold MDS BTA authorization for areas along the Gulf of Mexico coast. If that becomes the case (and WCA certainly hopes it does not), the licensee of a MDS BTA authorization along the coast may well want to participate in the auction in order to secure the neighboring water-based service area and, in the process, protect its existing land-based system. While Datacom implies that there is something inappropriate with the securing of licenses in order to provide a buffer against interference, the Commission has actually encouraged wireless systems operators to secure authorizations for BTAs adjacent to those in which their systems are located. In explaining its decision to employ a simultaneous multiround system for conducting the MDS BTA auctions, the Commission reasoned that:

[w]e believe that the BTA service authorizations to be auctioned possess a degree of interdependence. As explained in the *Notice*, “[t]here appears to be some geographic interdependence due to coordination of interference at the borders.” Indeed, because we have selected a filing approach based on predetermined geographic areas, rather than a national filing window, we emphasize that authorizations for adjacent BTA service areas will be interdependent, as common ownership of such areas will reduce problems of controlling interference at the borders of the BTAs.^{6/}

With respect to WCA’s argument that adoption of the rules proposed by PetroCom would trample the rights of existing land-based BTA authorization holders, PetroCom similarly seeks to distort the record. For example, PetroCom asserts that “WCA resorts to fabricating rights for BTA license holders that do not exist, such as the right to serve the entire Gulf of Mexico beyond clearly defined BTA boundaries.”^{7/} It is not surprising that PetroCom provides no citation to any WCA filing in support of this statement, for WCA has *never* contended that existing BTA authorization holders have rights extending throughout the entire Gulf. To the contrary, what WCA specifically said was that “incumbent MDS and ITFS stations based on land have protected service areas that can extend as far as 35 miles into the Gulf, while MDS BTA authorization holders have purchased the right to provide video, voice and data services to oil and gas platforms and other users many miles into the Gulf” and provided a detailed legal analysis establishing that BTA authorizations extend several miles into the Gulf, with the exact distance depending upon the state covered by the BTA.^{8/}

^{6/}*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 (1995)(citation omitted).

^{7/}PetroCom Reply Comments, at 6.

^{8/}WCA Opposition, at 6.

That is a far cry from suggesting, as PetroCom does, that WCA believes BTA holders have the right to serve the entire Gulf.

Similarly, PetroCom misstates the record when it contends that WCA's claim that bidders for MDS BTAs along the Gulf coast relied upon the lack of any Gulf BTA "is not supported by a single shred of independent evidence."^{9/} WCA will readily provide the Commission with affidavits from individuals who participated in the MDS auction which establish their thinking, if the staff desires such affidavits. However, the best evidence is that put forth by WCA in its initial filing in this proceeding – at the MDS auction the price per bidding unit was approximately \$49.80 for 472 BTAs and BTA-like areas that did not border the Gulf of Mexico, while the high bids for the 21 BTAs bordering the Gulf of Mexico were almost doubled, averaging approximately \$90.71 per bidding unit!^{10/} As WCA demonstrated, that phenomenon can be largely explained by the fact that those bidding along the Gulf had one less BTA to acquire in order to provide a viable service on land near the Gulf coast.^{11/}

As WCA made clear in its initial filing, "WCA's objection to the proposals being advanced by PetroCom is grounded in a desire to assure that the licensing of facilities in the Gulf not jeopardize the ability of land-based MDS and ITFS licensees to provide a variety of wireless video, voice and data services to consumers."^{12/} In support of that proposition, WCA submitted an Engineering Statement prepared by George Harter of Hardin & Associates, Inc., one of the pre-eminent MDS/ITFS consulting engineers. In response, all PetroCom can muster is a bald-faced assertion that "PetroCom fully recognizes that any wide area MDS/ITFS licensee in the Gulf will have to afford protection to existing incumbent and BTA licensees that use the same frequencies" and the contention that "[t]he statement of WCA's engineer, attached to its Opposition, ignores these requirements."^{13/} Not surprisingly, PetroCom has not identified even one interference protection rule that Mr. Harter has failed to consider. Mr. Harter's Engineering Statement analyzed the specific rules being proposed by PetroCom, which would have permitted a Gulf facility to generate a -75 dBw/m² signal at the common border between its BTA-like service area and the 35 mile PSA of an incumbent MDS or ITFS station, and concluded that such a Gulf-based operation could cause

^{9/}PetroCom Reply Comments, at 6.

^{10/}See WCA Opposition, at 19.

^{11/}*Id.*

^{12/}*Id.* at 8-9.

^{13/}PetroCom Reply Comments, at 4-5 and n.6.

interference to most, if not all, of the land-based system's PSA.^{14/} PetroCom has been caught advocating an approach that would have caused massive interference to land-based systems. Its effort to shift the blame to Mr. Harter for failing to consider some unidentified interference protection requirements is embarrassing.^{15/}

It is worth noting at this juncture that WCA was hardly alone in its concerns regarding the potential for interference. Indeed, although Bachow/Coastel, L.L.C. ("Bachow/Coastel") supports the concept of MDS/ITFS use in the Gulf, it too recognizes that "PetroCom's proposal would lead to interference to land-based MDS and ITFS licensees" and that "the Commission cannot adopt technical rules based upon PetroCom's paucity of engineering data suggesting that interference will not occur."^{16/} Bachow/Coastel's recognition of the likelihood of interference speaks volumes.

Datacom erroneously implies that WCA wants the Gulf of Mexico not to be licensed as a single geographic unit, but rather subdivided into smaller BTAs.^{17/} In fact, WCA expressed no opinion as to whether the Commission should establish multiple geographic areas prior to any auction. However, WCA did demonstrate that the public interest will be well-served by allowing geographic partitioning of any Gulf licenses.^{18/} While Datacom suggests that "the low population of the Gulf does not justify subdividing the BTA," that argument is difficult to square with its call for the issuance of four licenses, rather than the two proposed by PetroCom.^{19/} Datacom can hardly be heard to argue that there are enough potential customers to support four licensees, while at the same time arguing that there are not enough customers to allow a single geographic area to be partitioned. In any event, if the highest and best use of the spectrum is, as Datacom suggests, for

^{14/}See WCA Opposition, at Attachment A, p.1.

^{15/}It is worth noting that while note 6 to PetroCom's filing implies that PetroCom intends for there to be some interference protection afforded land-based systems other than a -75 dBw/m² power flux density at the boundary, the first sentence of paragraph 11 to PetroCom's filing suggests that the power flux density limit is intended to be the only measure of interference protection. Compare PetroCom Reply Comments, at 5 n. 6 with *id.* at 8.

^{16/}Reply Comments of Bachow/Coastel, L.L.C., RM-9718, at 3-4 (filed Sept. 24, 1999)[hereinafter cited as "Bachow/Coastel Reply Comments"].

^{17/}See Datacom Reply Comments, at 7.

^{18/}See WCA Opposition, at 28.

^{19/}Compare Comments of Rig Telephones Inc. dba Datacom, RM-9718, at 4 (filed Sept. 11, 1999) with Datacom Reply Comments, at 7.

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Gulf-wide communications systems, then presumably the high bidder in the auction process will be the proponent of such a system. However, the fact remains that, unless the Commission adopts rules which completely protect land-based BTA authorization holders from interference and allow those authorization holders appropriate flexibility in the future to modify their systems, the holders of land-based MDS BTA authorizations will want an opportunity to participate in the auction and bid for the rights being auctioned for water-based areas adjacent to their land-based systems. Partitioning is essential to achieving that objective.

Throughout this proceeding, WCA and others have taken PetroCom to task for having delayed submitting any proposal for the licensing of the Gulf until after the completion of the Commission's rulemaking to establish rules governing the auction of MDS spectrum.^{20/} Now, PetroCom responds with a classic *non sequitur*: "WCA conveniently omits the dates on which PetroCom filed applications for developmental licenses and its original rule making petition, *both of which occurred well after the Commission established markets for wide area MDS licensing.*"^{21/} This is precisely WCA's point! Although the MDS auction closed on March 28, 1996,^{22/} PetroCom's predecessor-in-interest delayed filings its petition for rulemaking until May 21, 1996 and its developmental applications until December 5, 1996 – long after others had acted in reliance on the fact that there would be no MDS BTA for the Gulf. Any rules adopted now to govern use of MDS in the Gulf must reflect those facts.

We hope that this clarifies WCA's positions on the issues pending before the Commission.

Respectfully submitted,



Paul J. Sinderbrand
William W. Huber

cc: Barbara A. Kreisman

^{20/}See, e.g. WCA Opposition, at 13; Opposition of Wireless One, *et al.*, DA 96-1721, at 3 (filed Nov. 18, 1996).

^{21/}PetroCom Reply Comments, at 6 (emphasis added).

^{22/}See "Winning Bidders in the Auction of Authorizations to Provide Multipoint Distribution Service," *Public Notice* (rel. March 29, 1996).

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