

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, DC 20554

In the Matter of	)	
	)	
Amendment of	)	
Part 2 of the	)	ET Docket No. 00-258
Commission's Rules	)	
To Allocate Spectrum	)	
	)	
	)	
Below 3 GHz for	)	
Mobile and Fixed	)	
Services to Support	)	
The Introduction	)	
Of New Advanced	)	
Wireless Services,	)	
Including Third	)	
Generation Wireless	)	
Systems	)	
	)	
	)	
Petition for Rulemaking	)	
Of the Cellular Telecommunications	)	
Industry Association	)	
Concerning Implementation of	)	RM-9920
WRC-2000 Review of Spectrum	)	
And Regulatory Requirements For	)	
IMT2000	)	
	)	
	)	
Amendment of the U.S.	)	
Table of Frequency Allocation	)	RM-9911
To Designate the 2500-2520/2670-	)	
2690 MHz Frequency	)	
Bands for Mobile Satellite Services	)	

**REPLY COMMENTS OF  
TELEPHONE AND DATA SYSTEMS, INC.**

Telephone and Data Systems, Inc., ("TDS") hereby files its Reply Comments in the above-captioned proceeding. In our Comments, TDS suggested that the FCC allocate a minimum of 180 MHz (30 MHz per wireless carrier per market) of new spectrum for 3G use, as that amount of spectrum would permit six carriers in each market to offer the full array of 3G services. TDS also asked that the FCC move quickly to allocate 3G spectrum and to clear existing incompatible frequency usages from the newly allocated 3G frequency bands, while reimbursing incumbent licensees in a process based on the PCS/private microwave model.

TDS also stated that while wireless carriers should be allowed and encouraged to provide 3G service within their existing frequency authorizations, as well as being permitted to apply for new 3G frequencies, that existing licensees in other services should not be permitted to abandon their public interest responsibilities on their present frequencies to provide 3G mobile wireless service, though they would be permitted to participate on equal terms in 3G auctions for new spectrum.

TDS endorsed bidding credits for small businesses but opposed any frequency set aside for "entrepreneurs."

Finally, and most importantly, TDS maintained that the FCC must define 3G service areas small enough to permit small, mid-sized, and rural wireless carriers to obtain new 3G spectrum and provide service. Specifically, TDS recommended that

Basic Trading Areas ("BTAs") be used for 3G markets. TDS opposed the use of Major Trading Areas ("MTAs"), as were used in the A and B Blocks for Broadband PCS, or Economic Area Groupings ("EAGs"), as were chosen for the upcoming 700 MHz auctions.

I.           Comments By Wireless Carriers  
          Reflect A Consensus on the Need For A  
          Reallocation of Adequate Spectrum  
          For 3G Purposes

Among commenting wireless carriers, there is a consensus that at least 160-180 MHz of new spectrum should be allocated for 3G, and that existing incompatible uses should be required to vacate the newly allocated spectrum with reasonable speed. Commenters have also stressed that those preparing to bid in 3G auctions should know prior to the auction approximately what their reimbursement expenses will be.<sup>1</sup>

There is, however, no consensus concerning which frequencies should be allocated to 3G. Many wireless carriers argue that 3G frequencies will have to come, in part, from present federal government allocations in the 1755-1850 MHz band.<sup>2</sup> Others stress the complexity of reallocating government spectrum, especially given the military facilities in the 1755-1850 MHz band, and urge the

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<sup>1</sup> See, e.g. Comments of Verizon Wireless pp. 1-15 ("Verizon") AT&T Wireless Services, Inc. ("AT&T Wireless" pp. 1-14, and Cingular Wireless, LLC, ("Cingular") pp. 1-12.

<sup>2</sup> See Joint Comments and Report of the Cellular Telecommunications & Internet Association ("CTIA"), Telecommunications Industry Association ("TIA"), and Personal Communications Industry Association ("PCIA"); AT&T Wireless Comments, p.14; Verizon Comments, pp. 10-11, 15-16.

FCC to focus on the 2110-2150 MHz, 2160-2165 MHz and 2500-2690 MHz bands for 3G use.<sup>3</sup>

MMDS and ITFS interests, however, have filed voluminous comments opposing reallocation of their current 2500-2690 MHz frequencies.<sup>4</sup>

At the end of this month, the FCC and NTIA will be filing their final reports on potential reallocation of the 2500 – 2690 MHz and 1755 – 1850 MHz bands for 3G use and then the FCC will have to decide the issue.

Having reviewed the filings and taking into account the extraordinary complexity of the issues involved, TDS takes no position on which bands should be reallocated for 3G use. Rather, we only reiterate that the FCC should, in making its decision about reallocation, be guided by its best judgment about what the public interest requires. It should not give undue consideration to the interest of any government agency or private licensee in maintaining its present frequency allocation, provided that it can receive comparable facilities through the relocation process.

In what follows, TDS will reiterate the positions which we believe are crucial to a fair outcome in this proceeding, noting the comments filed by other parties which provide further support for those positions.

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<sup>3</sup> See Cingular Comments, pp. 18-25.

<sup>4</sup> See, e.g. Comments of Sprint Corporation; Wireless One of North Carolina, LLC; IP Wireless, Inc.

II. Existing Non-Mobile Licensees Should  
Not Be Allowed To Offer 3G Mobile Service  
On Their Existing Frequency Authorizations

TDS (Comments, p.11) asked that the FCC not allow licensees with non-mobile authorizations to use all or part of their existing spectrum (for example, in the 2500-2690 MHz band) to provide 3G mobile services. We pointed out that it would undermine the integrity of the auction process to require current wireless licensees to spend many millions of dollars on 3G auction payments and relocation costs while allowing other licensees to pay nothing to shift to 3G mobile services. At the same time, such licensees would be abandoning their existing responsibilities, which would not serve the public interest.

TDS would note that at least one wireless commenter, namely AT&T Wireless, agrees with our position.<sup>5</sup> AT&T Wireless "urges the Commission not to add a mobile application to [the 2500-2690 MHz] band," pointing out that such an action "would provide incumbent MDS and ITFS operators with an unwarranted windfall"<sup>6</sup>

Comments filed in the first round suggest another argument in support of this position. ITFS, MDS, and MMDS operators filed scores of comments urging the FCC not to disturb their frequency authorizations, stressing their importance for educational and other public purposes.

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<sup>5</sup> AT&T Wireless Comments, p. 13

Wireless carriers, however, noted a scarcity of data as to how much of their large block of spectrum is actually being used for educational purposes or indeed, is being used at all, and have asked the FCC to gather such data.<sup>7</sup> Again, TDS believes that while the data should be gathered, only the FCC can balance the conflicting interests and make the ultimate judgment as to whether those frequencies and/or others should be reallocated for PCS use.

However, TDS would note that the ITFS and MMDS licensees cannot and should not "have it both ways" on this issue. If the FCC decides that they are right and spares their frequencies from reallocation, such licensees should certainly be required to continue to provide the services they now provide and not abandon those services to become 3G mobile licensees on their existing frequencies.

III.                   The FCC Must Act Now to Create  
                          A 3G Market Structure Which Will Permit  
                          Small, Mid-Sized And Rural Carriers To Participate  
                          In The Provision of 3G Service

The questions of how much spectrum and which frequencies should be allocated for 3G purposes are certainly critically important. However, equally important in TDS's view is the question of how the 3G market should be structured, for that, more than anything else, will determine whether small, mid-sized and rural wireless carriers will be able to participate in the provision of 3G service. As

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<sup>6</sup> Ibid.

<sup>7</sup> See Verizon Wireless Comments, p. 23.

TDS pointed out in our earlier Comments (p.6), encouraging such participation is not merely a matter of justice to smaller carriers. It is a statutory obligation as well, pursuant to Sections 309 (j)(3)(A-B) and 309 (j)(4)(c) of the Communications Act, which together require, inter alia, that the FCC promote an equitable distribution of licenses and services among geographic areas and that the Commission disseminate licenses to small businesses and rural telecom companies.

In our Comments (pp. 4-7), TDS proposed that the FCC not designate for 3G the type of very large service areas which the FCC has recently adopted in the Broadband PCS and 700 MHz dockets. To auction licenses on an EAG basis, as was done in the 700 MHz proceeding, would be to prevent, at the outset, any but the largest wireless carriers from having the opportunity to become 3G licensees, as EAGs encompass more than 40 million people each and such areas are too large to be served by any but the largest carriers.

TDS proposed that the FCC adopt BTAs as the designated 3G market areas. We believe that the recent PCS Auction 35 has demonstrated the viability of BTAs as wireless service areas and only BTAs, or comparably sized markets, will allow small, mid-sized, and rural carriers to participate in the provision of advanced wireless services.

As best we can determine, no other filers raised the issue of 3G market definition, though we hope other commenters will do so on reply.<sup>8</sup> Nonetheless, given the tight schedule contemplated by the previous Administration for the 3G rulemaking, with auctions expected to be completed by September, 2002, it is entirely appropriate that the FCC consider the issue of market size now if small, mid-sized and rural carriers are not to be precluded from 3G participation.

This is especially the case given the FCC's failure to solicit comment on whether the existing CMRS "spectrum cap," set out at Section 20.6(d) of the FCC's Rules, should be applied to 3G. Clearly, it is assumed by the FCC and the national wireless carriers<sup>9</sup> that the spectrum cap will not be applied to 3G. However, an absence of spectrum aggregation limitations plus EAG type service areas would certainly mean absolute dominance of 3G by the national carriers. The only means of avoiding that is by creating opportunities for small, mid-sized and rural carriers to provide service through fair 3G service area definitions.

Finally, we would note that this is not merely an issue of concern to small, mid-sized and rural wireless carriers. The FCC and other government agencies have repeatedly expressed concern over the slow pace of deployment of advanced telecommunications services, including broadband, to rural America.<sup>10</sup>

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<sup>8</sup> Cook Inlet Region, Inc. helpfully discussed the importance of small business participation in 3G and the possibility of small businesses developing "niche" markets (Comments pp. 5-6), but did not discuss market definition.

<sup>9</sup> See, e.g., Cingular Comments, pp. 13-15; CTIA Comments, pp. 4-7

<sup>10</sup> See Inquiry Concerning the Deployment of Advanced Telecommunications Capability, CC Docket No. 98-146, Second Report, FCC 00-920, ¶ 220-223, 237-241 (August 20, 2000); Rural

Choosing overly large 3G service areas would create one more obstacle to the provision of advanced mobile wireless services in rural America. National carriers will obviously build out urban areas first within such service areas and may leave the rural portions of their service areas permanently unserved, at their option.

It has been argued that spectrum "disaggregation" and the newly proposed "secondary markets" initiative may help to solve the problem of lack of service in rural areas. However, the difficulty with both approaches is that they leave the decision about whether to "disaggregate" or sell unused or underused spectrum to the licensee alone. The business interest of licensees may not coincide with the interests of rural Americans. Moreover, national carrier licensees may pursue "disaggregation" on "leasing" strategies only with their affiliates, which will preclude independently owned companies from being able to obtain spectrum or partitioned service areas.

We submit that the adoption of too large service areas should be unacceptable to an FCC which wants rural America to enjoy the blessings of the information age and wishes to preserve competitive opportunities for small, mid-sized and rural carriers. We ask the FCC to define 3G service areas in a way which will give rural America a fighting chance to be served and will give those independent and smaller carriers which already offer telephone and wireless service to rural America a chance to provide 3G service.

IV.        The FCC Should Consider Allowing  
             Auction Payments To Reimburse  
             Relocated Licensees

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In considering how to fulfill its statutory mandate to foster 3G service to rural America, the FCC may want to consider an innovative idea raised by a wireless commenter.

Cingular suggests (Comments, pp 21-22) that 3G auction revenues be used to pay the relocation expenses of federal government agencies whose facilities might have to be moved as a consequence of 3G frequency allocation. This would mean that prospective bidders for these 3G licenses could value them solely on the basis of their value as "cleared spectrum." TDS believes that this is a meritorious proposal, deserving of careful consideration. We also suggest that the FCC consider applying this idea to the relocation of private licensees as well.

Absent the adoption of the Cingular proposal or a comparable alternative, under present policies,<sup>11</sup> 3G licensees would have to pay for their frequencies at auction, would have to negotiate and pay to relocate the facilities of government agencies or existing private licensees, and then would have to pay to construct their systems.

Combining steps 1 and 2 would be an enormous boon to small, mid-sized and rural 3G licensees, who lack the financial resources of the national carriers, by removing uncertainty about the possible costs of relocating incumbent users,

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<sup>11</sup> See NPRM, ¶ 42, 54

including government agencies and possibly private licensees. It would also serve the public interest by promoting prompt relocation of incumbent systems so that 3G networks can be implemented at the earliest possible opportunity.

Respectfully submitted,

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