

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

In the Matter of)	
)	
Amendment of Part 2 of the Commission's)	
Rules to Allocate Spectrum Below 3 GHz)	
for Mobile and Fixed Services to Support the)	ET Docket No. 00-258
Introduction of New Advanced Wireless)	
Services, including Third Generation Wireless)	
Systems)	
)	
Mass Media Bureau Multipoint Distribution)	
And Instructional Television Fixed Service)	Report No. 164
Applications Accepted for Filing)	
)	
Mass Media Bureau Provides Further)	
Information Regarding Grants of ITFS and)	DA 01-751
MDS Two-Way Applications)	

OPPOSITION TO EMERGENCY PETITION

The Wireless Communications Association International, Inc. (“WCA”) hereby opposes the so-called “Emergency Petition to Defer Action on Applications” filed by Verizon Wireless (“Verizon”) on March 28, 2001 requesting that the Commission defer, for an indefinite period that could stretch for years,¹ the granting of pending applications by Multipoint Distribution Service (“MDS”) and Instructional Television Fixed Service (“ITFS”) licensees for modification of existing facilities and to add boosters and response station hubs within their already-authorized service areas (the “Verizon Petition”). Simply

¹ The Commission must note that the *Final Report* released today, “Spectrum Study of the 2500-2690 MHz Band: The Potential for Accommodating Third Generation Mobile Systems,” confirms what WCA and others in the MDS/ITFS community have been saying throughout this proceeding – there is no comparable spectrum to which MDS and ITFS licensees can be relocated, and any attempt to segment the 2500-2690 MHz band without undermining the deployment of broadband wireless services and the benefits that deployment will bring would raise substantial policy and regulatory issues that cannot readily be resolved. As such, it would be absurd to assume that the Commission can quickly adopt a plan for segmenting the band and that the freeze requested by Verizon would be of only a short duration. The only way in which the Commission can rule quickly on the band is to do what the record demands – take the 2500-2690 MHz “off the table” as a possible home for so-called “third generation” mobile services.

put, the Verizon Petition is an outrageous and unprecedented attempt to delay the deployment of broadband wireless services that will compete against Verizon's own DSL offerings and that will provide broadband service in areas where Verizon has not made the infrastructure investment necessary to provide DSL.

The appropriate response to Verizon's missive can be found in the commitment Chairman Powell made just yesterday to the Subcommittee on Telecommunications and the Internet of the House Committee on Energy and Commerce:

We will do everything we can to facilitate the timely and efficient deployment of broadband infrastructure. In doing so, we will endeavor to promote the growth of a wide variety of technologies that can compete with each other for the delivery of content and will strive not to favor – or uniquely burden – any particular one.²

That approach is fully consistent with that advocated by Ivan Seidenberg, the President and Co-Chief Executive Officer of Verizon's parent company, who recently wrote in the Wall Street Journal that DSL and cable modem service "will be joined in coming years by broadband fixed wireless . . . connections. *The primary objective of federal policy makers should be to encourage new investment and allow competition between these rival "last-mile" technologies.*³ It is impossible to square Mr. Seidenberg's rhetoric with his company's request for delaying, perhaps for years, the licensing of MDS/ITFS facilities that are essential to the deployment of competitive broadband services.

² Opening Statement of Michael K. Powell, Chairman, Federal Communications Commission, before the Subcommittee on Telecommunications and the Internet of the House Committee on Energy and Commerce (Mar. 29, 2001), at <http://www.fcc.gov/Speeches/Powell/Statements/2001/stmkp112.doc> (last visited March 30, 2001).

³ Seidenberg, "Stop Blocking the Broadband Revolution," WALL ST. J., Mar. 1, 2001, at A22 (emphasis added).

The outrageous nature of Verizon's call for the Commission to stop the deployment of competitive broadband wireless services dead in its tracks is only exacerbated by the suspect eleventh-hour timing of Verizon's filing. Certainly, Verizon cannot be heard to claim that despite the numerous *Public Notices* that preceded the Commission's August 2000 filing window, despite the clear references to those applications in the Commission's November 15, 2000 *Interim Report*,⁴ despite the Commission's November 29, 2000 *Public Notice* announcing the tendering of applications filed by MDS and ITFS licensees for modification of existing facilities and to add boosters and response station hubs within their already-authorized service areas,⁵ despite the Commission's February 2, 2001 *Public Notice* announcing the acceptance for filing of those applications,⁶ and despite the fact that since 1998 the Commission's Rules have provided that "each application submitted during the initial window shall be granted on the sixty-first day after the Commission shall have given such public notice of its acceptance for filing" under most circumstances,⁷ it has only now become aware of the upcoming application grants. Indeed, a cynic might say that Verizon deliberately waited until the eleventh hour in order to maximize the possibility that its filing would indeed disrupt the timely grant of the long-standing applications.

⁴ "Interim Report - Spectrum Study of the 2500-2690 MHz Band: The Potential for Accommodating Third Generation Mobile Systems," ET Docket 00-232, *FCC Staff Report* (Nov. 15, 2000).

⁵ "Mass Media Bureau Multipoint Distribution Service and Instructional Television Fixed Service Applications Tendered for Filing," *Public Notice*, Report No. 148 (rel. Nov. 29, 2000).

⁶ "Mass Media Bureau Multipoint Distribution Service and Instructional Television Fixed Service Applications Accepted for Filing," *Public Notice*, Report No. 164 (rel. Feb. 1, 2001).

⁷ See 47 C.F.R. §§ 21.31(d), 74.911(e), *adopted in Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and Instructional Television Fixed Service Licensees to Engage in Fixed Two-Way Transmissions*, 13 FCC Rcd 19112 (1998).

While the Verizon Petition paints its request as consistent with precedent, the facts belie that claim. The low power FM decision cited by Verizon involved a freeze on the granting of experimental authorizations prior to the adoption of service rules to avoid giving experimental license holders an advantage in securing permanent licenses – a far cry from the situation here.⁸ The paging and digital television situations cited by Verizon are similarly unlike the facts presented by the pending MDS and ITFS applications. In neither of those cases were the applications subject to the freeze filed by existing licensees – here, the applications are all applications filed by existing licensees who are seeking modification of existing facilities or the addition of boosters or response station hubs within their already-licensed service areas. Indeed, in the paging and digital television decisions, the Commission specifically allowed existing licensees to modify their facilities.⁹ Thus, those decisions reaffirm that the Commission does not lightly preclude existing licensees from improving their facilities. In fact, Verizon has failed to identify a single case where the Commission has done so.

In sum, the words of Chairman Powell bear repeating:

⁸ See *Creation of Low Power Radio Service*, 14 FCC Rcd 2471, 2472 n.1 (1999) (“We have begun to receive requests for “experimental” authorizations for low power FM service that essentially would be identical to services now under consideration in this proceeding. We are concerned that many more individuals and entities may react to this *Notice* by attempting to “jump the gun” by also filing premature applications under the guise of requests for experimental stations. We do not consider it appropriate to prejudge the outcome of this rule making or to begin a premature race for authorizations by considering such requests at this time, and interested parties are advised to await the outcome of this proceeding to file applications pursuant to whatever rules we may establish if we authorize such service.”).

⁹ See *Advanced Television Systems and Their Impact on the Existing Television Broadcast Service*, 76 RR 2d 843, 843 (1987) (“Accordingly, we will temporarily freeze the TV Table of Allotments in certain areas. No petitions to amend the table will be accepted for these areas. Further, construction permit applications for vacant television allotments in these areas will not be accepted. This freeze, however, will not apply to changes requested by existing stations. Moreover, applications and petitions for rule making already on file will continue to be processed as usual.”); *Acceptance of 929-930 MHz One-Way Paging Applications*, 6 FCC Rcd 6024, 6024 n.2 (1991) (“We will continue to accept applications to modify existing facilities.”).

If we shield mature industry participants from the pressures of having to adapt to the presence of new entrants, we merely prevent these new entrants from offering customers greater value at a lower price, while simultaneously rewarding incumbents for providing no new value to the economy other than income for armies of lobbyists.¹⁰

WCA urges the Commission to see the Verizon Petition for the anti-competitive effort it is and to reject it immediately.

Respectfully submitted,

THE WIRELESS COMMUNICATIONS
ASSOCIATION INTERNATIONAL, INC.

By: /s/ Andrew Kreig
Andrew Kreig
President

1140 Connecticut Avenue, NW
Suite 810
Washington, DC 20036
(202) 452-7823

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¹⁰Remarks of Michael K. Powell, Chairman, Federal Communications Commission, before the Federal Communications Bar Association, New York, New York (May 27, 1998), at <http://www.fcc.gov/speeches/powell/spmkp813.html> (last visited Mar. 30, 2001); see also *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 and Implementation of Section 309(j) of the Communications Act -- Competitive Bidding*, 9 FCC Rcd 7665, 7666 (1994) (“[I]n providing communications services, the public interest is better served by competition. A competitive industry framework promotes lower prices for services, provides incentives for operators to improve those services and stimulates economic growth.”).

CERTIFICATE OF SERVICE

I, Candace Lamoree, hereby certify that the foregoing Opposition to Emergency Petition was served this 30th day of March 2001 by depositing a true copy thereof with the United States Postal Service, first class mail, postage pre-paid, addressed to the following:

John T. Scott, III
Vice President and Deputy General Counsel – Regulatory Law
Verizon Wireless
1300 I Street, N.W.
Suite 400 West
Washington, D.C. 20005

/s/ Candace Lamoree
Candace Lamoree