

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

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| In the Matter of |) | |
| |) | |
| Amendment of Part 2 of the Commission’s |) | ET Docket No. 00-258 |
| 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 |) | |

**JOINT OPPOSITION OF
AT&T WIRELESS SERVICES, INC. AND VERIZON WIRELESS**

AT&T Wireless Services, Inc. (“AT&T Wireless”) and Verizon Wireless hereby submit their opposition to the petitions for reconsideration of the Commission’s Second Report and Order^{1/} filed by Sprint Corporation (“Sprint”) and the Wireless Communications Association International, Inc. (“WCA”) in the above-captioned proceeding.^{2/}

AT&T Wireless and Verizon Wireless appreciate Petitioners’ concern that incumbent licensees should not be cleared from auctioned spectrum without replacement spectrum and reimbursement of legitimate relocation costs. However, Petitioners’ proposed solution – to reverse the decision and restore the 2150-2160/62 MHz band to MDS licensees – is entirely misguided. No legal claim compels reversal, nor do the Petitioners or any other party assert that such action would be sound public policy. The Commission has initiated a separate proceeding to adopt a relocation plan for MDS licensees that will vacate 2150-2160/62 MHz and should

^{1/} *Amendment of Part 2 of the 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*, Second Report and Order, 17 FCC Rcd. 23193 (2002) (“*Second R&O*”).

^{2/} Sprint Corporation Petition for Reconsideration, ET Docket No. 00-258 (filed Feb. 24, 2003) (“Sprint Petition”); Wireless Communications Association International, Inc. Petition for

address Petitioners' claim therein by promptly identifying relocation spectrum – namely, spectrum in the 2.5 GHz band, as discussed further below.^{3/}

In any event, the Commission has not yet “displaced” any licensee from any band and no licensee has been “stranded” or “left spectrally homeless.”^{4/} Indeed, as Sprint acknowledges, the Commission made clear in the *Second R&O* that the need to adopt service rules for the AWS spectrum and to await the availability of companion Federal Government spectrum in the 1710-1755 MHz band means that there is sufficient time for the Commission to identify “any necessary relocation spectrum for MDS licensees and to craft appropriate relocation procedures.”^{5/} Moreover, the Commission recognized “the importance of avoiding unnecessary delay so as to minimize uncertainty to existing licensees.”^{6/}

The Petitioners' real concern appears to be that the Commission has not agreed that *their* plan is “the *only* workable solution to clearing the 2150-2162 MHz band.”^{7/} The Commission's failure to adopt the MDS industry's relocation proposal, however, provides no basis for

(cont.)

Reconsideration, ET Docket No. 00-258 (filed Feb. 24, 2003) (“WCA Petition”) (collectively “Petitions”).

^{3/} See *Amendment of Part 2 of the 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, The Establishment of Policies and Service Rules for the Mobile-Satellite Service in the 2 GHz Band, Amendment of the U.S. Table of Frequency Allocations to Designate the 2500-2520/2670-2690 MHz Frequency Bands for the Mobile-Satellite Service, Petition for Rule Making of the Wireless Information Networks Forum Concerning the Unlicensed Personal Communications Service, Petition for Rule Making of UTStarcom, Inc., Concerning the Unlicensed Personal Communications Service*, ET Docket No. 00-258, IB Docket No. 99-81, RM-9911, RM-9498, RM-10024, Third Report and Order, Third Notice of Proposed Rulemaking, and Second Memorandum Opinion and Order, 18 FCC Rcd. 2223 (2003) (“*Third NPRM*”).

^{4/} Cf. Sprint Petition at 2, 4; WCA Petition at 3-5.

^{5/} Sprint Petition at n.8 (quoting *Second R&O* ¶¶ 6, 41).

^{6/} *Id.*

^{7/} See WCA Petition at 3 (emphasis in original).

reconsideration of the reallocation decision. To the contrary, the Commission is completely justified in balking at a proposal that seeks to exchange a single 10 megahertz block of spectrum^{8/} for 12 megahertz of paired spectrum.^{9/} The record in this proceeding has already noted the increased value of paired spectrum in providing advanced wireless services.^{10/} Although Sprint and WCA complain loudly and frequently about the need for “comparable spectrum,” they decline to explain how their proposed trade-up from an unpaired to paired bands is comparable or would be anything other than a windfall under their own defined need.

The Petitioners’ assertion that the Commission is “relegat[ing] MDS to second class status in the debate over an additional 3G spectrum allocation”^{11/} rings especially hollow in light of the comprehensive rulemaking proceeding just commenced to restructure the 2500-2690 MHz (“2.5 GHz”) band to permit incumbent MDS licensees to introduce innovative fixed and mobile

^{8/} The Petitioners’ contention that they are entitled to 12 megahertz of replacement spectrum is incorrect. Although certain MDS stations utilizing the 2160-2162 MHz frequencies were “grandfathered” when the Commission reallocated the band to emerging technologies, any subsequent use of these 2 megahertz by MDS BTA license holders is secondary. *Third NPRM* at n.169. The Commission has long held that “only stations with primary status are entitled to relocation,” and the bidders in the MDS auctions should have expected nothing else. *Third NPRM* ¶ 72.

^{9/} Under the MDS Industry “Compromise Solution,” MDS channel 1 would be relocated to the paired 1910-1913/1990-1993 MHz block, and MDS channel 2/2A would be moved to the paired 1913-1916/1993-1996 MHz block. See A Compromise Solution for Relocating MDS from 2150-2162 MHz, ET Docket Nos. 00-258 and 95-18, IB Docket No. 01-185, Prepared by BellSouth Corporation, Nucentrix Broadband Networks, Inc., Sprint Corporation, WorldCom, Inc., and the Wireless Communications Association International, Inc., at 2 (filed July 11, 2002).

^{10/} See, e.g., *id.* at 4 (asserting that adoption of the Compromise Solution will allow the MDS industry an opportunity “to develop rapidly advanced services by building upon existing technologies that operate near 2 GHz and have 80 MHz of separation between transmit and receive frequencies”); *Second R&O* ¶ 19 (noting that most carriers in the U.S. have indicated plans to provide advanced services by deploying technologies that use paired channels); *Service Rules for Advanced Wireless Services in the 1.7 and 2.1 GHz Bands*, WT Docket No. 02-353, Notice of Proposed Rulemaking, 17 FCC Rcd 24135 ¶ 30 (2002).

^{11/} WCA Petition at 15.

services.^{12/} Indeed, although the MDS industry had previously touted the importance of the 2.1 GHz frequencies in facilitating two-way services in conjunction with the 2.5 GHz band, the MDS/ITFS Coalition fails altogether to mention the 2150-2160/62 MHz return channels in its 2.5 GHz re-banding plan.^{13/} This suggests that the 2.1 GHz frequencies are irrelevant in the MDS industry's plans for spectrum use.

Notwithstanding Petitioners' desire to secure the paired 1910-1916/1990-1996 MHz bands for themselves, their proposal is not the best relocation solution for the 2.1 GHz MDS licensees. As AT&T Wireless and Verizon Wireless explained in their comments on the *Third NPRM*, a much more logical home for the MDS licensees vacating 2150-2160 MHz is the 2.5 GHz band.^{14/} It is clear that, as part of their planned reconfiguration of the band, the MDS licensees currently operating in that spectrum intend to deploy state-of-the-art cellularized systems (potentially for both fixed and mobile services) instead of the much less spectrally efficient supercell architectures previously used. Given the deployment of more spectrally efficient technology in the 2.5 GHz band, a sufficient amount of unpaired ITFS spectrum at 2.5 GHz can be made available to the MDS operators relocating from 2150-2160 MHz without affecting the development of either fixed broadband or educational services. MDS and ITFS

^{12/} See *Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, et al.*, WT Docket Nos. 02-66, RM-10586, *et al.*, Notice of Proposed Rulemaking and Memorandum Opinion and Order, FCC 03-56 (rel. Apr. 2, 2003) ("*MMDS/ITFS NPRM*").

^{13/} The MDS/ITFS Coalition has submitted a proposal to realign the 2.5 GHz band, which would provide 132 megahertz of paired spectrum to support the development of two-way services employing low-power, cellular networks, and leave 58 megahertz for one-way educational services. See *A Proposal for Revising the MDS and ITFS Regulatory Regime*, Wireless Communications Association International, Inc., the National ITFS Association, and the Catholic Television Network, WT Docket Nos. 02-66, RM-10586, *et al.* (filed Oct. 7, 2002).

^{14/} AT&T Wireless Reply Comments on *Third NPRM* at 9-10; Verizon Wireless Reply Comments on *Third NPRM* at 4-7.

licensees would be hard pressed to argue that in 190 megahertz of spectrum, there is no room to accommodate the 2.1 GHz licensees.

Moreover, even though the 2.1 GHz MDS licensees have never mentioned the 2500-2690 MHz band as an option for replacement spectrum, this proposal should be acceptable to them because it would serve a number of their stated – and unstated – goals. Specifically, if the 2.5 GHz band is reconfigured as the MDS/ITFS Coalition proposes, through a series of spectrum swaps, then both paired and unpaired spectrum would be available to meet each licensee’s particular needs. Relocated operators would, therefore, be able to replicate both the high-powered, traditional wireless cable services and the two-way services (paired with 2.5 GHz) that are currently provided in the 2.1 GHz band. In addition, designating the 2.5 GHz band as the home for all MDS operations would alleviate Petitioners’ concerns that Commission policies will “Balkanize MDS deployment into multiple bands that would vary from market to market, depriving the MDS industry of economies of scale in the design and manufacturing of equipment.”^{15/}

Petitioners also should be aware that the obligation of new licensees to pay their relocation costs may actually be quite limited. As Nucentrix noted in its comments on the *Third NPRM*, “only existing facilities require funding from incoming licensees to move their facilities to different frequencies.”^{16/} AT&T Wireless and Verizon Wireless agree that licensees with no current operations in the 2150-2160 MHz band should not be compensated. Furthermore, in light of the MDS industry’s proposal to reconfigure the 2.5 GHz spectrum to permit two-way operations wholly within that band, there does not appear to be an ongoing need for the upstream

^{15/} See WCA Petition at 7.

^{16/} Nucentrix Comments on *Third NPRM* at 10.

segment currently provided in the 2.1 GHz band. Indeed, as discussed above, the MDS/ITFS Coalition failed altogether to mention the 2.1 GHz channels in its reconfiguration plan. Thus, many systems at 2150-2160/62 MHz will voluntarily cease to operate because of the re-banding – not as a result of the Commission’s reallocation decision. New AWS licensees should not be required to bear the costs of moving these non-existent facilities.^{17/}

Although AT&T Wireless and Verizon Wireless agree that MDS operators vacating the 2150-2160 MHz band are entitled to comparable replacement spectrum and reimbursement for legitimate relocation costs, the Commission should resist attempts by the Petitioners to use its reallocation decisions as an opportunity to gain undeserved windfalls at the public’s expense. Rather than capitulate to the MDS industry’s demands for paired frequencies at 1910-1916/1990-1996 MHz and excessive payments for clearing their current spectrum, the Commission should incorporate the 2.1 GHz MDS incumbents into the 2.5 GHz band reconfiguration plan. Unlike the short-term spectrum windfall sought by the Petitioners, adoption of AT&T Wireless’ and Verizon Wireless’ proposal would do more than keep the 2.1 GHz MDS licensees whole – it would give them the ability to provide two-way advanced wireless services, expand operations and meet additional spectrum needs easily, and exploit economies of scale in equipment development.

^{17/} It is not clear whether the Petitioners’ relocation plan entails “reimbursement” for the new two-way facilities they would need for operations at 1910-1916/1990-1996 MHz . If that is their expectation, however, they have failed to demonstrate that such facilities would be “comparable” to the equipment they use now to provide return channels in the 2.1 GHz band.

CONCLUSION

For the foregoing reasons, the Commission should deny the Petitions for Reconsideration filed by Sprint and WCA.

Respectfully submitted,

AT&T WIRELESS SERVICES, INC.

VERIZON WIRELESS

/s/ Douglas I. Brandon
Douglas I. Brandon
Vice President - External Affairs
David P. Wye
Director, Spectrum Policy
1150 Connecticut Avenue, N.W.
Fourth Floor
Washington, D.C. 20036
(202) 223-9222

/s/ John T. Scott
John T. Scott, III
Vice President and Deputy General Counsel
– Regulatory Law
Verizon Wireless
1300 I Street, N.W., Suite 400W
Washington, D.C. 20005
(202) 589-3760

/s/ Donald C. Brittingham
Donald C. Brittingham
Director – Spectrum Policy
Verizon Communications
1300 I Street, N.W., Suite 400W
Washington, D.C. 20005
(202) 589-3785

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CERTIFICATE OF SERVICE

I, Angela Collins, hereby certify that on this 14th day of May, 2003, the foregoing “Joint Opposition of AT&T Wireless Services, Inc. and Verizon Wireless” was filed electronically on the FCC’s Electronic Comment Filing System and copies were served via electronic mail to the following:

Qualex International
Portals II
445 12th Street, S.W. Room CY-B402
Washington, D.C. 20554
qualexint@aol.com

Bryan Tramont
Senior Legal Advisor
Office of Chairman Michael Powell
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
btramont@fcc.gov

Paul Margie
Spectrum and International Legal Advisor
Office of Commissioner Michael Copps
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
pmargie@fcc.gov

Samuel Feder
Legal Advisor on Spectrum
and International Issues
Office of Commissioner Kevin Martin
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
sfeder@fcc.gov

Jennifer Manner, Senior Counsel
Office of Commissioner Kathleen S.
Abernathy
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
jmanner@fcc.gov

John B. Muleta, Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
jbmuleta@fcc.gov

Andrea Kelly
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
akelly@fcc.gov

Barry Ohlson
Interim Legal Advisor for Spectrum and
International
Office of Commissioner Jonathan S. Adelstein
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
bohlson@fcc.gov

Elias Johnson
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
ejohnson@fcc.gov

John M. Spencer
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
jspencer@fcc.gov

/s/ Angela Collins

Angela Collins