

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

In the Matter of)	
)	
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)	WT Docket No. 03-66 RM-10586
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Part 1 of the Commission's Rules – Further Competitive Bidding Procedures)	WT Docket No. 03-67
)	
Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and the Instructional Television Fixed Service)	MM Docket No. 97-217
Amendment of Parts 21 and 74 to Engage in Fixed Two-way Transmissions)	
)	
Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Licensing in the Multipoint Distribution Service and in the Instructional Television Fixed Service for the Gulf of Mexico)	WT Docket No. 02-68 RM-9718

COMMENTS OF THE INFORMATION TECHNOLOGY INDUSTRY COUNCIL

The Information Technology Industry Council (ITI) respectfully submits these comments as part of the proceeding to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands (FCC 03-66). ITI represents the top providers of information technology (IT) products and services in the United States and is the voice of the high

tech community. ITI is a leading advocate of policies that advance U.S. leadership in technology and innovation, open access to new and emerging markets, support e-commerce expansion, and protect consumer choice.

I. Introduction

As the leading information technology trade association, ITI supports the development of a regulatory framework that will promote the rapid development of affordable, high-speed Internet access. The goal is to ensure that the maximum number of consumers can experience the full potential of the Internet and the information technology revolution. Wireless technologies have enormous potential to advance that goal. The availability of sufficient spectrum, and the proper regulation of that spectrum, are the keys to realizing the potential of these technologies and for continued growth and innovation in the wireless sector.

Through the formation of the Spectrum Policy Task Force and other initiatives and proceedings, the Federal Communications Commission (the Commission) has moved to support innovation and the efficient, flexible use of spectrum. ITI commends the Commission for taking these steps to create a rational spectrum policy. By addressing critical spectrum needs and by striving to achieve a better balance of spectrum uses by government and the private sector, the Commission is ensuring that maximum use is made of scarce spectrum resources. In doing so, the Commission also assists in strengthening U.S. global economic leadership.

Specifically, in this Notice of Proposed Rulemaking to revise the Multichannel Multipoint Distribution Service (MMDS) and the Instructional Fixed Service (ITFS)

rules, the Commission undertakes the important initiative of simplifying the licensing process, deleting obsolete and unnecessary regulatory burdens, and fostering the development of innovative service offerings to consumers as well as educational, medical, and other institutions. ITI supports the comprehensive examination of the rules and policies governing MMDS and ITFS services so that further advancements can be made in the establishment of a uniform regulatory policy and the efficient and effective utilization of spectrum.

II. Inefficiencies of the Current Regulatory Framework

Current use of the 2150-2162 MHz and 2500-2690 MHz bands is very inefficient and impedes the adoption of efficient new technologies and uses such as broadband access. This significant and valuable swath of spectrum, particularly the 190 MHz of contiguous spectrum in the MDS/ITFS band, is dramatically underutilized. The most glaring evidence of this inefficiency is that the number of MDS and ITFS subscribers constitutes only .5% of the multi-channel video programming distribution market.

One of the problems with the current band plan is that it establishes a system in which ITFS stations are interleaved among MDS channels, thereby creating inefficiencies either through conflicts between license holders of interleaved channels or through efforts by license holders to obtain contiguous spectrum in the band. The threat of interference that created the original need for an interleaved licensing process has long been eliminated by technological innovations in the wireless industry.

The current band plan also allocates 6 MHz for each channel. Since some digital video transmissions require only 1 MHz of spectrum for transmission, the current band

plan effectively prevents full use of the spectrum. This outdated, forty-year old regulatory regime creates encumbrances that do not allow for optimal use of the spectrum.

Additionally, current rules require ITFS users to use only 5% of channel capacity for educational purposes. Although many ITFS licensees lease their spectrum capacity to companies offering subscriber-based services, the commercial wireless firms that can offer advanced services need additional flexibility to develop and provide new services to more markets throughout the country.

The spectrum at issue in this proceeding is capable of supporting wireless high-speed data services, both mobile and fixed, and for residential and business use. If advanced wireless services are to be viable in these bands, it is necessary to use an approach that enhances rather than limits the flexible nature of the services.

III. Recommendations

As the Commission stated in its Notice of Proposed Rulemaking, this proceeding provides an opportunity to further the goal of establishing regulatory policies that promote competition, innovation, and investment in broadband services.¹ ITI agrees with the Commission that broadband services should exist in an environment that eliminates regulations that deter investment and innovation and recognizes rules that promote competition.² Inherent in such a goal is establishing certainty in the marketplace. To this end, ITI believes that emphasis should be placed upon the establishment of an efficient

¹ *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 Band*, 18 FCC Rcd 6722 (2003), par. 32.

² *Id.*

band plan, reforming the licensing process through the implementation of two-sided auctions and other modifications, and allowing market forces to determine how spectrum is best used.

A. Establish an Efficient Band Plan

ITI supports many of the elements of the proposal put forth by the Wireless Communications Association International, the National ITFS Association, and the Catholic Television Network (the Coalition) including the use of geographic licensing, imposing rules which allow for operation of high-power one-way services and other two-way cellular services so that they are free from interference, and facilitating the ability of individual licensees to develop new commercial and educational services by deinterleaving the band. The suggestions are worthy of careful examination and consideration and could be helpful in realizing the potential of the MDS/ITFS spectrum.

However, whether the Commission adopts the proposal of the Coalition in whole or in part, it is the view of ITI that the Commission should be guided by the ultimate goal of establishing an efficient band plan that promotes the continued deployment of two-way broadband video, voice, and data services. ITI believes that characteristics of an efficient band plan would include rules providing licensees with flexibility to provide new services or to lease capacity to other providers, establishing contiguous channels within the band, and adopting an approach that reflects the flexible nature of the services in this band while minimizing or eliminating interference through more clearly defined technical requirements.

B. Reform the License Process

ITI believes that reforming the licensing process in the MDS/ITFS bands is essential to realizing the potential of this valuable spectrum. The current licensing regime precludes providers and educators alike from using ITFS and MDS technologies to bring important and exciting services to the nation. Accordingly, there are a few specific parts of the licensing process in this band that ITI urges the Commission to address.

1. Open Eligibility

ITI believes that open eligibility for entrants into this spectrum is essential to realizing the most efficient use for this spectrum. ITI believes that incumbents in the band should be able to retain their licenses but that the new rules that will govern the band should allow for open eligibility. The Commission has stated previously that open eligibility generally favors the public interest because expanding the pool of auction applicants helps to ensure that licenses are awarded to licensees that value them most highly and are therefore more likely to offer prompt service to the public.³ Through open eligibility competition will be enhanced, the availability of services will improve, and innovation will be encouraged through a broader and more flexible standard of competition.

2. Correct Problems Caused by Interleaved Licensing

Because of technological innovations, the system of interleaved licensing in the ITFS/MDS bands has become obsolete. It was originally designed to resolve interference concerns inherent in television sets used for ITFS reception. Decades ago these

³ In the Matter of Implementation of Competitive Bidding Rules to License Certain Rural Service Areas, 17 FCC Red. 1960 (2002).

television sets could not receive adjacent channels without interference, but as consumer devices have improved in quality they have eliminated these concerns and the rationale for interleaving.

Under the current interleaved band plan, licensees are often forced to obtain the consent from the licensee of the interleaved channel group before providing broadband services. This results in the imposition of unnecessary encumbrances on spectrum and on licensees.

3. Consideration of Two-Sided Auctions

ITI believes a two-sided auction could provide significant benefits and should be given serious consideration. For instance, by conducting a simultaneous two-sided auction in which incumbents can participate voluntarily the transaction costs of restructuring spectrum could be substantially lessened. Implementing a two-sided auction in this way eliminates the need to revoke licenses from ITFS incumbents. Two-sided auctions could also facilitate aggregation across frequencies and geographic licenses leading to consumer benefits such as the mass production of devices and nationwide roaming agreements between providers.

A two-sided auction could have the dual benefit of bringing more certainty as to which spectrum will be available for new uses at the end of the auction as well as allowing for a much quicker transition period. In doing so it would bring much-needed certainty to the market for wireless services. Prospective providers will then have the ability to better assess potential uses in newly allocated spectrum bands and the costs associated with those new services. Consequently, they will be able to make long-term

investments even sooner and bring about more ubiquitous availability of broadband in a variety of settings.

C. Allow Market Forces to Determine Best Use for Spectrum

ITI believes that employing market forces with regard to spectrum allocation and policy will tend to push licenses to their most-needed use. Accordingly, ITI urges the Commission to consider the recommendations of the Spectrum Task Force Report to increase opportunities for technologically innovative and economically efficient spectrum use by evolving towards more flexible and market-oriented regulatory models.⁴ The Report also concludes that such models will require well-defined rights and responsibilities for licensed and unlicensed spectrum users, particularly with regard to interference.⁵ This will require the Commission to adopt clearly defined technical rules to prevent interference, minimize the need for guardbands, and provide a stable operating environment. Moreover, the MDS/ITFS band has been mentioned as a possible candidate for a transition to a market allocation of spectrum.⁶ ITI therefore urges the Commission to establish a framework that can take advantage of the natural benefits of a market-oriented approach to spectrum management.

⁴ Spectrum Policy Task Force Report, ET Docket No. 02-135, November 2002, p. 3.

⁵ *Id.*

⁶ See Evan Kwerel & John Williams, *A Proposal for a Rapid Transition to Market Allocation of Spectrum*, OPP Working Paper #38, November 2002.

IV. Conclusion

For these reasons, reform of the MMDS and ITFS regulatory regime is needed to promote innovation, more efficient use of existing spectrum, and ensure that Internet users can get maximum value from wireless applications and connectivity that ITFS and MDS providers can offer.

Respectfully submitted,

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