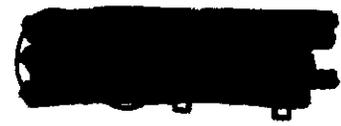


Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554



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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)
)
Part 1 of the Commission's Rules – Further)
Competitive Bidding Procedures)
)
Amendment of Parts 21 and 74 to Enable)
Multipoint Distribution Service and the)
Instructional Television Fixed Service)
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)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY
WT Docket No. 03-66
RM-10586

WT Docket No. 03-67

MM Docket No. 97-217

WT Docket No. 02-68
RM-9718

To: The Commission

COMMENTS OF DALLAS MDS PARTNERS

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Dated: September 8, 2003

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SUMMARY

Dallas MDS Partners (“Dallas MDS”) is the licensee of the E Channel Group in Dallas, Texas and as such its views are representative of the holders of the E and F MMDS channel groups. The Commission should adopt new rules that permit but do not require 3G service on MDS and ITFS channels; mandatorily de-interleave the E and F blocks without compensation to or from either party; impose non-interference rules on the D4 and G1 ITFS channels that protect 3G service on the E and F blocks; and take no other actions herein.

The Commission correctly notes that in 1983 it reallocated the eight E and F Group channels to MMDS to increase spectrum available for commercial service. This allocation of 48 MHz of contiguous commercial spectrum is the most important building block for the 3G services of the future and should be the focus of this proceeding. To foster the development of 3G services in the MDS/ITFS bands, the Commission should adopt rules that protect and enhance the ability of E and F channel licensees promptly to offer new 3G services.

The Commission should not split up the E and F blocks as proposed by the Coalition Plan. Doing so would destroy the largest contiguous block of commercial spectrum available now for 3G services. The E and F blocks are interleaved only with each other and should be de-interleaved, without involving any ITFS channels. De-interleaving of the ITFS channels is unnecessary. The E and F licensees should not be bogged down in any ITFS channel reallocation plan. The E and F blocks are adjacent only to the D4 and G1 ITFS channels. Special non-interference rules should be imposed on those two ITFS channels.

Mandatory de-interleaving of the E and F channels and non-interference rules for the D4 and G1 ITFS channels, are the only two rule changes necessary or advisable to promote the roll-out of new 3G services in the MDS/ITFS bands, as further explained herein.

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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
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Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and the Instructional Television Fixed Service)	MM Docket No. 97-217
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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
)	

To: The Commission

COMMENTS OF DALLAS MDS PARTNERS

Dallas MDS Partners ("Dallas MDS"), by its undersigned counsel, hereby respectfully submits comments to the above-referenced Notice of Proposed Rulemaking ("the Notice").

Dallas MDS is the licensee of the E Channel Group of MMDS channels in the Dallas, Texas area. As such, Dallas MDS believes that its views are representative of the interests of the E and F channel block licensees.

I. The Commission's Goal Should Be To Get More 3G Services Online As Soon As Possible.

The Commission's goal in this proceeding should be to get more 3G services online as soon as possible. Broadband deployment is one of the primary goals of the Commission. The benefits of delivering broadband to the American public need not be recited again here. Broadband deployment will serve the public interest by enabling them to receive all forms of service delivered over digital, two-way communications, many of which are still in the process of being invented and cannot even be foreseen, just as the new uses of the personal computer are still expanding each year.

With the goal of deployment of broadband services in mind, the Commission needs to carefully prioritize its concerns and actions in this proceeding in order best to achieve that goal. Several points emerge from the record to date. The Commission has, at the request of the industry, engaged in a series of complex rulemakings in these bands over the past several years. Rather than promoting new investment in broadband service, these lengthy proceedings and the complicated rules that grew out of them have caused most parties to withhold new investment. The lesson is, keep it simple. Complexity and uncertainty stifle investment.

Secondly, we have seen that the interleaving of channels in this band has required operators to engage in negotiations to obtain consents and channels swaps. These negotiations sometimes have succeeded, but after considerable delay and cost, and in many cases have not succeeded, further delaying and impeding new investments. The lesson is, allow for private negotiation of channel swaps and inter-carrier compensation, but do not make the success of the roll-out of 3G services dependent upon the success of such private negotiations.

And the third fact that is clear from the record is that many ITFS licensees are not interested in offering 3G services. They want to continue to use their channels for high-powered,

television in the classroom type service. The NPRM appears to spend an inordinate amount of time discussing the auction of vacant ITFS spectrum. In urban areas, even third-tier markets, the ITFS spectrum is licensed. An auction of vacant rural ITFS spectrum is not a logical focus for this proceeding.¹ The lesson here is that the ITFS spectrum is not the right place to focus to achieve the roll-out of new 3G services.

The combined message from the record is that to achieve its stated goal of rolling out new 3G services, the Commission needs to adopt rules that are simple, do not require complex private negotiations, and do not rely upon ITFS spectrum. The record thus points logically to the contiguous 48 MHz of commercial spectrum in the E and F blocks as the proper focus herein.

II. Prioritizing the E And F Channel Groups Is The Best Way To Get 3G Services Online Quickly.

The Commission's goal of deploying new 3G services and the lessons learned from the record in this proceeding to date, lead to the conclusion that any new rules adopted herein should focus on freeing up the E and F channels for the roll-out new 3G services. The new rules should not take spectrum away from that important 48 Mhz commercial channel block. The new rules should not require E and F Group licensees to negotiate with or obtain permission from any other licensees in order to rollout 3G services. And the new rules should provide the simplest application procedures and the most flexible technical rules to allow the widest variety of potential 3G services.

¹ While ITFS spectrum may be vacant in some rural areas and rural residents may need broadband, the possibility of auctioning vacant ITFS spectrum to provide broadband appears speculative when one considers that applications were not filed for this spectrum, even when the licenses were free. The Commission states that it does not intend to take spectrum away from existing licensees, "if they have been in compliance with our rules." Notice at para. 2. The Commission appears to be deliberately withholding the processing of numerous pending ITFS renewal applications. An inference could be drawn that the Commission is contemplating an attempt to create vacate ITFS spectrum by not renewing existing ITFS licenses. This would lead only to protracted litigation, not a speedy roll-out of 3G services. Use of ITFS spectrum for commercial 3G services is problematic; use of the E and F channels would be simple and efficient, so long as the Commission avoids counterproductive rule changes herein.

The Notice correctly notes that in 1983 “the Commission reallocated eight of the ITFS channels and associated (R) channels (E and F Channels) for MDS.” Notice at para. 10. This spectrum reallocation is the foundation of the MDS commercial service. The E and F Channel Groups provide a block of eight six MHz commercial channels for a total of 48 MHz of contiguous commercial spectrum that can be used to provide 3G services now. The Commission should focus on the E and F Channel Groups and consider what it can do to foster the roll-out of 3G service in that commercial block.. How the Commission handles the ITFS channels should flow from prioritizing the E and F channels, rather than making ITFS the focus of this NPRM.

When the ITFS and MDS channels were being used to attempt to provide analog wireless cable service, it was necessary to attempt to assemble all of the ITFS and MDS channels in a market in order to attempt to have enough six MHz channels to compete with wired cable systems. New 3G technology makes it unnecessary to assemble all of the ITFS and MDS channels in a market in order to rollout 3G services. The E and F Channel Groups comprise a sufficient block of spectrum to roll-out of new 3G services. Two limited rule changes would be best suited to make 3G an immediate reality on the E and F channels.

First, the Commission should de-interleave the E and F groups. This can be done without the involvement of any other licensees, particularly the ITFS licensees, because the E and F channels are interleaved only with each other and not with any other channel group(s). The E and F group interleaving has delayed service in markets where the channel groups are separately owned and private agreements cannot be reached. The Commission can solve this by mandatory reallocation of the E and F channels into two groups of four contiguous channels. Since both channel groups are licensed for commercial use, no compensation should be due to or from either

party. None of the issues surrounding compensating ITFS licensees for channel swaps and equipment re-tuning would be involved in de-interleaving the E and F channels.

Second, the Commission needs to deal with the presence of two ITFS channels at the periphery of the E and F channel groups, namely the D4 and G1 ITFS channels which are adjacent to the E and F commercial channel block. This problem readily can be addressed by amending the rules to give priority to commercial operations on the E and F blocks. The rules should be amended to provide that licensees of the D4 and G1 ITFS channels can continue to use those channels as they see fit for educational purposes, provided that they cannot cause interference to commercial 3G operations on the E and F Channel Groups.

This non-interference rule would encourage, but not mandate, that the adjacent D and G Group ITFS licensees seriously consider using their channels for 3G services. If the D and G Group ITFS licensees chose to convert to 3G service, they would have full use of all four channels. If they chose not to provide 3G service, only their use of one of their four channels would be restricted. This is not a draconian position for the Commission to take, given the public interest in rolling out new 3G services.

Implementing the two simple proposals² set forth above likely would be entirely sufficient to enable the Commission to achieve its goal of rolling out 3G services on all of the channels. This would occur because under the above proposals, the Commission would de-interleave only the E and F Groups. The ITFS channels would be left interleaved and this continued interleaving would produce a cascading incentive for ITFS conversion to 3G without complex rule changes and costly and time consuming litigation.³ The rules should permit, but

² Two rules: mandatory de-interleaving of the E and F channels without compensation to either party; D4 and G1 channel licensees must protect 3G services on the adjacent E or F block

³ The incentive that is given to the D Group licensee to convert to 3G in order to be able to use the D4 channel would require the D Group licensee to convince the C Group licensee to do the same, and so on. Likewise, the

not require, ITFS licensees to convert to 3G operations, and let the D4/G1 channel non-interference rule provide the incentive.⁴

III. The Commission Should Not Bog Down E and F Block Licensees With Complex Procedures That Would Stifle New 3G Services.

Dallas MDS appreciates the efforts of the industry trade associations to attempt to propose a compromise plan that would be all things to all people. However, the Coalition Plan fails to focus on the 1983 reallocation of the E and F Channel Groups for commercial use. Instead of preserving this important 48 MHz block of contiguous commercial spectrum that is ready and waiting for 3G, the Coalition Plan proposes to reallocate 25% of the spectrum back to ITFS and split the remainder up, thereby destroying the largest block of contiguous commercial spectrum in these bands and dimming the prospects for 3G.

Under the Coalition Plan, one channel from each of the E and F Channel Groups would be moved into a high-power midband that is designed for analog television in the classroom services. This amounts to reallocating 25% of the E and F block spectrum back to ITFS, at a time when the Commission wants to increase the available 3G spectrum, commercial licensees on the E and F channels want to offer 3G services, and ITFS operators have said they may not.

Besides providing a high powered band for analog television in the classroom, the Coalition also attempts to justify the midband as necessary for diplexing mobile equipment. Diplexing is not necessary for TDD technology. The purported advantages for FDD are far outweighed by the disadvantages. The disadvantages are that, as noted, one of each of the E and F block channels is effectively reallocated to ITFS use, and then the remaining three channels of

imposition of a mandatory non-interference rule on the G1 channel would incent the G Group holder to cooperate with the H channel licensees

⁴ G Group licensees would be further incented by H channel licensees who want to offer 3G services. However, the Commission should not focus this proceeding on the 3 H channels any more than it should focus on the ITFS channels. The E and F channel blocks are the largest blocks of contiguous commercial spectrum and should be the focus of the NRPM as the single most fertile area in which to roll-out 3G services.

each group are split up with one channel going into one low power band and two channels into the other low power band. The net result of all of this is clear: a 48 MHz block of contiguous commercial spectrum that is immediately available to launch new 3G services is split up into multiple segments that are dispersed between other licensees.

This would not de-interleave the E and F channel groups and free them up to launch 3G service. Rather, the Coalition Plan would break up the E and F block and interleave it among other licensees in a manner that almost certainly would delay and impede the roll-out of 3G service. The Coalition Plan proposes to embroil the E and F block licensees in complex negotiations with ITFS licensees in order to induce the ITFS licensees to move to different channels and to compensate them for retuning costs in doing so. Such negotiations and proceedings are likely to be time consuming and costly, and are likely to frustrate, not promote, the roll-out of 3G services.

No rationale exists to embroil the E and F block licensees in the Coalition Plan. The E and F block licensees are **not** currently interleaved with any ITFS channels. E and F block licensees are only interleaved with each other. To the extent that ITFS licensees need or want to de-interleave, no rationale exists to involve the E and F channel blocks in that process. The E and F channels are adjacent to only two ITFS channels, D4 and G1. This is a simple matter to resolve, if the Commission is serious about 3G broadband. It simply needs to adopt adjacent channel interference rules that prioritize 3G service over obsolete analog service on those two ITFS channels.

In sum, the Coalition proposal to attempt to address all concerns of all parties is counter-productive in that it unnecessarily embroils all parties in a complex series of negotiations that are in fact unnecessary to jump start 3G services in the MDS/ITFS band. Focusing on the E and F

Channel Groups will accomplish the Commission's objectives in a simple, cost-effective and expeditious manner.

IV. Conclusion

WHEREFORE, for the foregoing reasons, Dallas MDS respectfully submits that the Commission adopt new rules that permit but do not require 3G service on MDS and IFTS channels; mandatorily de-interleave the E and F blocks without compensation to or from either party; impose non-interference rules on the D4 and G1 channels that protect 3G service on the E and F blocks; and take no other actions.

Respectfully submitted,

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