

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554**

In the Matter of)
)
Amendment of Parts 1, 21, 73, 74 and 101 of) WT Docket No. 03-66
the Commission's Rules to Facilitate the) RM-10586
Provision of Fixed and Mobile Broadband)
Access, Educational and Other Advanced)
Services in the 2150-2162 and 2500-2690)
MHz Bands)

To: The Secretary
Attn: The Commission, *en banc*

REPLY TO OPPOSITIONS TO PETITION FOR RECONSIDERATION

AD HOC MDS ALLIANCE (Ad Hoc), by its attorney, respectfully submits its reply to the Federal Communications Commission to opposition comments filed by WCAI,¹ Sprint Nextel² and WiMAX Forum³ to Ad Hoc's Petition for Reconsideration dated July 19, 2006.⁴ Ad Hoc respectfully submits that these opposition comments have been entirely resolved by Ad Hoc's modification of its proposal on August 18, 2006.⁵ Accordingly, the oppositions should be rejected and Ad Hoc's petition should be granted.

¹ The Wireless Communications Association International, Inc. (WCAI), Consolidated Opposition and Comments, WT Docket No. 03-66, August 18, 2006 (the "WCAI Comments").

² Comments and Consolidated Opposition of Sprint Nextel Corporation to Petitions for Reconsideration, WT Docket No. 03-66, August 18, 2006 (the "Sprint Nextel Comments").

³ WiMAX Forum Comments on Petitions for Reconsideration, WT Docket No. 03-66, August 18, 2006 (the "WiMAX Comments").

⁴ Ad Hoc MDS Alliance, Petition for Reconsideration, WT Docket No. 03-66, July 19, 2006 (the "Ad Hoc Petition").

⁵ Ad Hoc MDS Alliance, Comments on Petitions for Reconsideration, WT Docket No. 03-66, August 18, 2006 (the "Ad Hoc Modification").

In response to the opposition comments, Ad Hoc respectfully states:

In its Petition for Reconsideration, Ad Hoc pointed out that MDS Channel 2A licensees (2156-2160 MHz) uniquely will have their licenses upgraded during the relocation/transition from a four MHz channel at 2.1 GHz to a full six MHz channel (2618-2624 MHz) at 2.6 GHz. In light of this unique upgrade, Ad Hoc's proposal in its original petition was to not "split the football" in 2622-2624 MHz band to resolve geographic service area overlaps between primary MDS Channel 2 incumbent licensees and incumbent MDS Channel 2A licensees.

On further consideration, however, Ad Hoc simplified its solution to this overlap issue by requesting that the primary MDS Channel 2 licensees retain all of their geographic service area. This is the most equitable resolution of the overlap because Channel 2A licensees still would have their licensed area substantially upgraded during the transition, by virtue of their 2 MHz increase in licensed spectrum, even without sharing any of the "football" with adjacent primary Channel 2 licensees. Under those circumstances, there is no equitable justification for additional encroachment into the territory of the Channel 2 licensees, since the effect of doing so would be to award even larger license upgrades to the Channel 2A licensees.

WCAI criticized Ad Hoc's petition because the "separate and distinct [Geographic Service Areas] for the 2618-2622 MHz and the 2622-2624 MHz portion of BRS channel 2" allegedly would "further Balkanize the 2.5 GHz band," and result in "underutilized, if not completely stranded, spectrum."⁶ Sprint Nextel similarly argues that Ad Hoc's proposal "would further fragment the BRS into smaller, even more irregular pieces" and would "disturb licensees' design

⁶ WCAI Comments at pp. 19-21.

and deployment plans”.⁷ WiMAX argues simply that the proposal to have separate GSAs for separate frequencies “will create unnecessary confusion.”⁸

The short answer to these criticisms is that they have been fully resolved in Ad Hoc’s August 18th modification to its petition. Awarding all of the “football” to the MDS Channel 2 licensees would mean that each licensee has the same GSA for all of its licensed spectrum, thus simplifying transition/relocation negotiations; there would be no underutilized or stranded spectrum; and there would be no more confusion about respective service areas under Ad Hoc’s plan than would be inherent in any event in having to calculate where a football should be split.

Moreover, WCAI’s suggestion that Ad Hoc has raised this issue too late is simply wrong.⁹ WCAI itself argued rather strenuously in its Petition for Partial Reconsideration on July 19, 2006 that the football splitting rule should be “clarified”.¹⁰ Since WCAI obviously believes that the rule properly can be reconsidered or clarified in response to its arguments, reconsideration or clarification of the rule likewise is proper in response to Ad Hoc’s arguments. The fact that different aspects of the rule are involved is irrelevant; both parties properly can and should seek equitable and reasonable application of the football splitting rule by the Commission.

Under the current rules, Channel 2A licensees uniquely and unilaterally benefit from a license upgrade, a significant part of which is taken directly out of the Channel 2 licensed areas, at the expense of the Channel 2 licensees. Under Ad Hoc’s modified proposal, by contrast,

⁷ Sprint Nextel Comments at pp. 10-11.

⁸ WiMAX Comments at p. 11.

⁹ See WCAI Comments at p. 20 & n. 49. Ad Hoc also points out that it is not challenging the validity of the Channel 2A upgrade itself, contrary to WCAI’s suggestion; and even if it were, the Commission has never made the public interest findings to justify the upgrade. The fact that WCAI made arguments to the Commission about upgrading Channel 2A does not obviate the need for the Commission to make the necessary public interest findings to justify it.

¹⁰ Petition for Partial Reconsideration of The Wireless Communications Association International, Inc., at pp. 10-12.

Channel 2 licensees are kept whole during the transition/relocation and Channel 2A licensees still are upgraded. Both sets of licensees would “win” under Ad Hoc’s proposal; only Channel 2A licensees “win” under the current rules, while Channel 2 licensees incontestably lose and directly “pay” for much of the Channel 2A licensees’ gain. Ad Hoc’s proposal clearly better serves the public interest and should be adopted.

Respectfully submitted,

AD HOC MDS ALLIANCE

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CERTIFICATE OF SERVICE

I hereby certify that I have this 31st day of August, 2006, served the foregoing Reply to Oppositions to Petition for Reconsideration by mailing a true copy thereof, first class postage prepaid, to all opposing commenters of record or their counsel, as shown on the following list:

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