

FHH Telecom Law

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FCC Redraws MDS/ITFS Rules (Again)

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The FCC has proposed another major revision of the MDS and ITFS rules in yet another effort to reinvigorate those services. The timing follows the regime-change transfer of MDS/ITFS to the Wireless Telecommunications Bureau, upon which the Bureau suggested to the major licensees that they develop a new band plan. An industry "white paper" resulted. Based on that white paper and the comments filed in response to it, the FCC released a Notice of Proposed Rulemaking that opens the door to dramatic changes.

Channel Plan: The FCC proposes to divide the MDS/ITFS band at 2500-2690 MHz band into two or three separate sections in each market. One section would be reserved for operators that intend to continue providing high-powered video services over their entire service areas. The other portion(s) of the band would be established for low-power, cellular-type operations to deliver mobile broadband services.

Protected Geographic Areas: The FCC believes the current site-based licensing scheme should be replaced with geographic service areas. As with PCS and other services licensed geographically, licensees could construct facilities anywhere within their service areas, so long as the power levels at the boundaries do not exceed a predetermined limit. As discussed below, part of this plan entails ITFS auctions to overlay new licenses on unused spectrum, much as was done for the MDS channels in 1996.

Transition to New Band Plan: The white paper proposed a transition to the new band plan driven by "proponents" on a market-by-market basis. As an alternative, the FCC suggests a plan similar to that used when PCS moved into occupied point-to-point spectrum: specified time periods for voluntary negotiations between newcomers and incumbents, then mandatory negotiations, and finally compulsory conversions, here based on the reduction of power levels. One main focus is determining who will pay for the changes -- especially relevant for the ITFS licensees, who will likely be required to renegotiate the excess capacity leases that provide them with revenue.

Technical Issues: Noting that high and low power facilities may be operating in close proximity, possibly in adjacent markets, the FCC seeks comment on technical rules for the mobile band, particularly the appropriate power levels and emission requirements. Also up for discussion is a proposal for unlicensed underlay services in the band.

Standardization: The FCC asks about standardizing the MDS/ITFS rules with the others administered by the Wireless Bureau, and whether it should consolidate MTS/ITFS -- now spread over three different parts of the FCC's rulebook -- under Bureau jurisdiction.

ITFS Auction: In one of its more controversial proposals, the FCC suggests auctioning unused ITFS spectrum, possibly for commercial use. The FCC notes that ITFS licensees have long been able to lease time on their channels for commercial use, and tentatively concluded that an auction of the unused spectrum would be neither contrary to the public interest nor unlawful.

Freeze On Applications: Having the greatest immediate impact is a freeze on filing of new and major change applications for ITFS and MDS licenses until new rules are adopted. Some licensees and their trade association have asked for reconsideration of this ruling. One possible resolution is a lifting of the freeze under limited circumstances, on a showing the licensee actually intends to construct new facilities in the near term.

Overall, it appears the FCC is serious once again about rethinking the MDS and ITFS industries. No doubt the FCC was also serious in 1996, when it auctioned the MDS overlay licenses; in 1996, when it permitted digital emissions; 1998, when it permitted two-way operations; and in 2001, when it authorized mobile uses of the spectrum. Some providers have found it difficult to build out a viable service in the constantly shifting regulatory framework. Perhaps this rulemaking will strike the FCC's final vision of the MDS and ITFS services -- at least for now.

Comment and reply dates are not yet available, pending publication in the Federal Register.