Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of Order to Show Cause
to Michiana Metronet, Inc.
for Point-to-Point station WLN896
at Fort Wayne, Indiana and
Point-to-Point station WLK941 at
Columbia, Indiana

ORDER TO SHOW CAUSE

Adopted: January 13, 1992; Released: February 6, 1992

By the Chief, Domestic Facilities Division:

1. Before the Commission for consideration is the motion for show cause order filed by James A. Simon (Simon), licensee for Multipoint Distribution Service (MDS) station WHD358 on channel 2A at Ft. Wayne, Indiana.[1] Simon requests that his license be modified by adding two megahertz to his existing authorization for MDS channel 2A so that the authorization could become authority for an MDS Channel 2 station. To accommodate the increase by two megahertz for MDS channel 2, Simon also requests the modification of the license of Michiana Metronet, Inc. (Michiana) for common carrier point-to-point station WLN896 at Ft. Wayne, Indiana. Simon requests that an order be issued for Michiana to show cause why its license should not be modified as requested. Simon states that he will reimburse Michiana for all reasonable costs associated with the requested modifications of station WLN896.[2] After appropriate modifications are made to point-to-point station WLN896, then it would be possible to grant a waiver of Section 21.901(c) of the Commission's rules, 47 C.F.R. Sec. 21.901(c), and grant a modification adding two megahertz for MDS station WHD358.

2. Michiana filed an Opposition to Motion for Order to Show Cause. Michiana states that Simon's argument that reallocation of this spectrum for video entertainment is in the public interest is merely a conclusory assertion.

> It is respectfully submitted that the current use of providing an ancillary backbone network for the Fort Wayne nonwireline cellular system better serves the public interest than would an additional wireless cable channel, especially in view of the number of full 6 MHz channels already available for video in the 2 GHz band.

Michiana's Opposition to Motion for Order to Show Cause at 4. Michiana also asserts that "[a]ccommodation of Simon would disrupt service to Michiana's public subscribers." *Id.* According to Michiana," [i]t would also affect future growth and expansion of the system, and the interference potential... can not be adequately assessed in advance." *Id.* at 4-5. "There are thus serious factual, legal, and policy questions as to whether the proposed license modification would be in the public interest." *Id.* at 5.

3. Simon filed a reply to Michiana's opposition, arguing: (1) Simon has located and coordinated in-band displacement spectrum for Michiana's station WLN896 so that there is no issue as to whether cellular or video entertainment service serves a greater public interest; (2) the alternative spectrum will not cause harmful interference and will not prevent future growth; (3) "contrary to Michiana's suggestion, other wireless cable channels are not 'alternatives' to using MDS Channel 2A in a 6 MHz configuration" (Simon's Reply at 3); (4) the local wireless cable operator needs to accumulate as many full-time 6 MHz channels as possible in order to compete with the local 37-channel cable television company; [3] (5) because Michiana also has a profit motive in operating its cellular system, it is not in a position to attack Simon because he has a profit motive; (6) "[n]otably, Michiana ignores entirely the portions of the Motion that point out that the Commission has adopted a mandate to assist wireless cable's development so that it can form a competitive restraint on cable" and the fact that Simon's proposal serves that mandate (Simon's Reply at 4); and (7) Michiana's opposition presents no facts to support its claim of adverse impacts [4] and fails to allege "that Simon cannot make those 'numerous changes,' that a plan to avoid's ervice interruptions' cannot be implemented, or that Michiana has plans superior to and that will be thwarted by Simon's proposal." Simon Reply at 5. Simon also states that "[t]he obvious solution to Michiana's claimed fears is adopting the order requested by Simon, which requires Simon to make the changes at Simon's expense and without disrupting Michiana's cellular operations." *Id.* Simon concludes by asserting that the perfunctory nature of Michiana's opposition demonstrates that issuing the proposed show cause order will not waste the Commission's resources. Simon Reply at 7.

4. The public interest would be served by consideration of a MDS Channel 2 authorization to replace the current MDS Channel 2A authorization for Ft. Wayne, Indiana. Authorization of MDS Channel 2 would allow the accumulation of an additional channel for video entertain-

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[1] The coordinates for Simon's MDS Channel 2A at Ft. Wayne, Indiana are: Lat. 41 deg. 06 min. 25 sec. N., long. 085 deg. 11 min. 46 sec. W.

[2] These expenses to be reimbursed would include costs for preparation of a modification application, costs for prior frequency coordination, the filing fee for a modification applications, the filing fee for a certification of completion of construction, cost for necessary replacement equipment, and costs for testing of replacement equipment.

[3] Instructional Television Fixed Service (ITFS) channels are only available on a part-time basis, if the ITFS licensee can be persuaded to lease its excess capacity. If the licensees of each MDS, MMDS and Operational Fixed Microwave H-channel station can be persuaded to lease, a maximum of 12 channels are available for full-time leasing by the local wireless cable operator. "All available channels are vital components to a system that must compete against entrenched cable that can always offer many more channels." Simon's Reply at 3-4.

[4] "Michiana has not presented a shred of evidence that microwave congestion in |Ft. Wayne| will ever develop." Simon Reply at 5.

ment programming to be distributed by the local wireless cable operator. MDS channel 2A is only four megahertz of spectrum. Six megahertz of spectrum currently is necessary to provide an MDS video signal, together with its associated audio signal. MDS channel 2 is six megahertz of spectrum.

5. The Commission has noted recently the public interest benefits to be derived from enhancing the competitiveness of MDS in today's multichannel video marketplace, which is increasingly characterized by systems using an increased number of channels to deliver video entertainment programming. *Second Report and Order, Wireless Cable Order,* 6 FCC Rcd 6792 (1991) ("By affording wireless cable operators a more accommodating regulatory framework, we aim to enhance the potential of wireless cable as a competitive force in the multichannel video distribution marketplace.... The *Report and Order* increased the availability of MDS channels for use in wireless cable systems. ..."*Id.)* ; *Order on Reconsideration, Wireless Cable Order,* 6 FCC Rcd 6764 (1991)("The purpose of this rulemaking proceeding was to facilitate the provision of 'wireless cable" service to the public. ..."*Id.); Further Notice of Proposed Rulemaking, Wireless Cable Order,* 5 FCC Rcd 6472 (1990); *Report and Order, Wireless Cable Order,* 5 FCC Rcd 6410, 6411 (1990)("This result should enhance the viability of wireless cable service and its stature as a competitive force in the multichannel video delivery marketplace." *Id.); Notice of Proposed Rulemaking,* 5 FCC Rcd 971 (1990)("Further, because MDS offers the public a viable alternative to cable television service, it holds the potential to function as a competitive spur to coaxial cable system operators. We have elsewhere acknowledged the increasing importance of such competition and continue to believe that we should take all possible steps to encourage and facilitate competitive multichannel video delivery systems." *Id.) See MMDS Allocation Order,* 94 F.C.C. 2d 1203 (1983)("The principal factor that most of the MDS entities commenting in this proceeding cited as limiting the growth of MDS is the lack of a multichannel capability." *Id.* at 1220. "In areas that are or are about to be cabled, competition from multichannel MDS may spur cable systems to build promised systems faster, improve existing systems, and keep prices low." *Id.* at 1228.)

6. According to Simon, Michiana's point-to-point operations could be accommodated if its station WLN896 was modified: (1) to change from frequency 2162 MHz to frequency 2178 MHz from Ft. Wayne to Columbia, using horizontal polarization; and (2) to substitute a Mark Antenna Products Model MHP-21AH96D (left-handed feed) antenna as the transmitting antenna directed to Columbia; and if its station WLK941 was modified: (3) to change from frequency 2162 MHz to frequency 2128 MHz from Columbia to Hilgas, Indiana, using horizontal polarization. Simon alleges that it is possible to change the point-to-point stations' frequencies without disruption of service to Michiana's existing cellular customers. *See also* 47 C.F.R. Sec. 21.100, 21.107, and 21.109.

7. Therefore, an *Order to Show Ca use* is directed to Michiana Metronet, Inc., licensee of common carrier point-topoint station WLN896, at Ft. Wayne, Indiana, and licensee of common carrier point-to-point station WLK941, at Columbia, Indiana, as to why its license for station WLN896 should not be modified, at the expense of Simon, to specify operation at frequency 2178 MHz, instead of operation at frequency 2162, and to specify, at the expense of Simon, use of a Mark Antenna Products Model MHP-21AH96D (left-handed feed) antenna, directed to Columbia from its station WLN896 at Ft. Wayne, Indiana, and as to why its license for station WLK941 should not be modified, at the expense of Simon, to specify operation at frequency 2128 MHz, instead of operation at frequency 2162 MHz. As licensees in the public interest, the parties are encouraged to proceed cooperatively to accommodate these changes. [5]

8. Accordingly, IT IS ORDERED that pursuant to Section 316(a) of the Communications Act of 1934, as amended, Michiana Metronet, Inc., licensee of station WLN896 at Ft. Wayne, Indiana and licensee of station WLK941 at Columbia, Indiana SHALL SHOW\ CAUSE why its license for station WLN896 SHOULD NOT BE MODIFIED to specify operation at frequency 2178 MHz from Ft. Wayne to Columbia, using horizontal polarization, instead of operation at frequency 2162 MHz, and also SHALL SHOW CAUSE why its license for station WLN896 SHOULD NOT BE MODIFIED to specify use of a Mark Antenna Products Model MHP-21AH96D (left-handed feed) transmitting antenna, directed to Columbia, Indiana, and SHALL SHOW CAUSE why its license for station WLK941 SHOULD NOT BE MODIFIED to specify operation at frequency 2178 MHz from Columbia to Hilgas, using horizontal polarization, instead of operation at frequency 2162 MHz.

9. Pursuant to Section 1.87 of the Commission's Rules, Michiana may file a written statement, not later than **March 16, 1992,** showing with particularity why its specified licenses should not be modified as proposed in the *Order to Cause.* [6] The Commission may require Michiana to submit additional information. If Michiana raises a substantial and material question of fact, a hearing may be required to resolve such a question pursuant to Section 1.87. Upon review of the statements and/or additional information submitted, the Commission may grant any or all of the modifications, deny any or all of the modifications, or set the matter of any or all of the modifications for hearing. If no written statement is filed on or before **March 16, 1992,** Michiana will be deemed to have consented to the modifications as proposed in the *Order to Show Cause* and a final *Order* will be issued by the Commission, if the above-mentioned modifications are found to be in the public interest.

10. IT IS FURTHER ORDERED that the Secretary of the Commission SHALL SEND, by CERTIFIED MAIL, RETURN RECEIPT REQUESTED, a copy of this *Order to Show Cause* to the licensee of common carrier point-to-point stations WLN896 and WLK941, Michiana Metronet, Inc., at 421 Fernhill Avenue, Fort Wayne, Indiana 46808.

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[5] If the parties are unable to reach an accommodation through negotiations, it is our present intent to proceed with consideration of Michiana's written statement filed in response to this show cause order, if any.

[6] If any, James A. Simon's reply comments must be filed on or before March 20, 1992.

11. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Domestic Facilities Division Public Reference Room, Room 6218, 2025 M Street N.W., Washington, D.C.

12. This order is issued pursuant to Sections 0.291 and 1.87 of the Commission's Rules, 47 C.F.R. Secs. 0.0291 and 1.87, and is effective on its release date.

FEDERAL COMMUNICATIONS COMMISSION

James R. Keegan
Chief, Domestic Facilities Division
Common Carrier Bureau