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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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MAY 29 1997

Federal Communications Commission
Office of Secretary

In the Matter of	)	
Amendment of Parts 21 and 74 to Enhance the Ability of Multipoint Distribution Service and Instructional Fixed Television Fixed Service Licensees to Engage in Fixed Two-Way Transmissions	)	RM-9060

REPLY COMMENTS OF CATHOLIC TELEVISION NETWORK, INC.

Pursuant to Section 1.405 of the Commission's Rules, Catholic Television Network, Inc. ("CTN"), by its undersigned attorneys, hereby submits its reply to the comments filed on May 14, 1997, regarding the above-captioned Petition for Rulemaking.[1] The petitioners have asked the Commission to modify the rules governing the Instructional Television Fixed Service ("ITFS") and Multipoint Distribution Service ("MDS") to permit two-way transmission of video, voice and data services.

SUMMARY

In its initial comments, CTN expressed support for the service concept identified in the Petition. However, it pointed out that there are substantial shortcomings in the proposals, which require further study by both the ITFS and

[1] See Public Notice, DA 97-637 (released Mar. 31, 1997). The Commission initially set the filing deadline for reply comments as May 15, 1997. However, in a Public Notice, released Apr. 28, 1997, the Commission extended this deadline until May 29, 1997.

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MDS communities. In particular, the proposals in the Petition lack the educational perspective which is inherent in ITFS. Other than noting the benefits to both ITFS and MDS stations of operation in digital modulation, no effort was made in the Petition to identify the educational needs of ITFS licensees and the institutions which they serve or to address how two-way data transmissions on ITFS frequencies could be used to enhance the instructional potential of ITFS. In addition, CTN pointed out that the proposals in the Petition raise substantial policy concerns regarding the preservation of the instructional character of the ITFS frequencies and the autonomy of ITFS stations.

The comments filed in this proceeding confirm that, like CTN, the ITFS community is generally supportive of modifying the Commission's Rules to permit two-way transmissions on ITFS and MDS frequencies. However, the commenting parties overwhelmingly agree with CTN that there are significant shortcomings in the Petition which must be resolved before the Commission can adopt well-grounded rules to expand services on ITFS frequencies consistent with the educational purpose of ITFS.

Given the substantial differences in thinking between educators and the wireless cable community and the numerous technical and legal concerns raised in the comments, CTN reiterates its recommendation that the Commission use the negotiated rulemaking process before moving forward with a Notice of Proposed Rule Making. Such face-to-face negotiations among engineers, lawyers, educators and wireless cable operators would allow all interests to have the opportunity:

* to consider the educational issues raised by use of ITFS spectrum for two-way transmissions,
* to develop the appropriate policies for the video, voice and data services to be authorized by the proposed rules,
* to reach a common understanding of the technical aspects of the proposal and interference issues, and,
* to draft mutually acceptable recommendations for modifying the Commission's Rules.

Whether or not the parties achieve consensus on the proposals in a negotiated rulemaking, the perspectives and expertise brought to bear on the issues would undoubtedly enhance the rulemaking procedure and facilitate the process initiated by the Petition.

I. THE COMMENTS CONFIRM THAT ANY NEW RULES FOR EXPANDED ITFS AND MDS SERVICES SHOULD TAKE INTO ACCOUNT THE NEEDS OF EDUCATORS AND THE STUDENTS WHOM THEY SERVE.

Petitioners claim that a "rare grouping" of MDS and ITFS parties contributed to the proposals in the Petition.[2] But, the initial comments make clear that a large percentage of the ITFS community was not involved in the planning or development of the proposed rule changes, nor were the needs of the ITFS community taken into account in the Petition. The source of the comments and the concerns they raise demonstrate the accuracy of this observation.

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[2] See Petition for Rulemaking, at 1 n.1.

Apart from those included as "petitioners," comments were submitted on behalf of about 60 ITFS parties. In contrast, despite the complex nature of this Petition and its broad impact on both ITFS and MDS parties, only one member of the commercial wireless cable industry (other than petitioners), filed comments in response.[3] The gross disparity between the number of ITFS and commercial entities commenting on the Petition confirms CTN's initial observation that the proposed rules have been generated primarily from the perspective of the wireless cable industry. It is thus understandable why the proposals do not adequately take into account the educational needs of ITFS licensees and the educational institutions which they serve.

Although the comments were generally supportive of the concept underlying the Petition,[4] there is a substantial gap between the Petition and the comments with respect to implementation of that concept, which must be remedied before the proposal can receive the full support of the ITFS community. Like CTN, other ITFS parties made clear that they will not support rule modifications that erode the primary educational purpose of the ITFS spectrum.[5] As one party explained:

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[3] See Comments of Gulf Coast MDS Service Company (seeking special exemption for provision of fixed two-way transmission in the Gulf of Mexico if the Commission rejects proposal to restructure ITFS and MDS services).

[4] See Comments of the Archdiocese of Los Angeles Education and Welfare Corporation, at 2; Joint Comments of ITFS Licensees submitted by Schwartz, Woods & Miller ("Schwartz, Woods Comments"), at 7 ("the Petition represents an excellent first step in the process toward changing Commission rules").

[5] See Comments of the Archdiocese of Los Angeles, at 2-3; Comments of PACE Telecommunications Consortium ("PACE Comments"), at 4-5.

"The Commission must ensure that ITFS licensees themselves share in the growth and development of wireless cable brought about by changes to the ITFS rules."[6]

The comments from the ITFS community confirm that the Commission should give further consideration to the educational needs of students in developing any proposed rule changes to enhance the performance of ITFS. As intended, ITFS can be an effective educational tool. But, to achieve this potential, educators must maintain access to multiple programming channels to address simultaneously the needs of multiple audiences. Interactive capability is also necessary to provide effective educational opportunities. + Use of an ITFS system with these characteristics can not only enhance instruction, but also help educational institutions reduce the per student cost of instruction, which is critical as the costs of providing education increase.

Developing ITFS to fill this critical role is consistent with the Commission's intention in creating the service. The Commission itself has repeatedly emphasized that the "primary purpose of ITFS . . . [is] to serve formal academic needs"[7] and the ITFS channels must be "primarily utilized for, satisfying a legitimate ITFS requirement."[8] Given the purpose established for ITFS, the

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[6] Comments of the Archdiocese of Los Angeles, at 3-4.

[7] Amendment of Part 74 of the Commission's Rules and Regulations in Regard to the Instructional Television Fixed Service, 101 FCC 2d 49, 80 (1985).

[8] Amendment of Parts 2, 21, 74 and 94 of the Commission's Rules and Regulations in Regard to Frequency Allocation to the Instructional Television Fixed Service, the Multipoint Distribution Service, and the Private Operational Fixed Service 94 FCC 2d 1203, 1252-53 (1983).

Commission should ensure that its policies on use of ITFS frequencies keep pace with the evolving needs of educators. Accordingly, any rules adopted for ITFS in this rulemaking must take into account how expanded services on ITFS frequencies would preserve and enhance the educational purpose of ITFS.

II. THE COMMENTS CONFIRM THAT FURTHER DEVELOPMENT OF THE LEGAL AND TECHNICAL GROUNDS FOR THE PROPOSED RULE CHANGES IS REQUIRED.

Although the parties filing comments generally agreed that the proposal to "cellularize" ITFS and MDS transmissions offers the potential to enhance both instructional and commercial uses of the ITFS and MDS frequencies, they identified significant flaws in the proposals which require either more development or more explanation.

Commercial purpose. Several commenters pointed out that the clear purpose of the proposed rules and policies is to maximize the commercial use of the frequencies. Despite the increasing needs of educators, communities, and students who benefit from "distance learning," commenters noted that the proposed rules could actually impede the academic mission of ITFS stations by unduly restricting the autonomy and business of individual licensees.[9] CTN agrees with the commenters who state that any rules adopted in this proceeding must provide each ITFS licensee with the capacity to "develop its system in the

[9] See PACE Comments, at 5-6; Comments of the Archdiocese of Los Angeles, at 4-5; Northeastern Comments, at 7.

manner that best suits its educational needs."[10] This would, of course, include ensuring that an ITFS licensee can continue to operate its station for strictly educational purposes and would not be forced into a cellularized system in order to continue operating in the market.

Technical information. Like CTN, a number of ITFS parties criticized the Petition for not providing sufficient technical information to allow independent analysis of whether the proposal would satisfactorily address interference protection.[11] These comments indicate disclosure of additional technical information is required so that a peer review process can validate the results of the Tucson field trial on which the Petition relies for support.[12] The comments also identified several interference issues, not adequately addressed in the Petition, which must be resolved before the proposals could ever be implemented, including: the impact of "multi-cellular or sectorized systems" on other stations in the market, the effect of "digital interference to an analog operation," and the effects of the "narrowband or 'superchannel'" transmission systems on existing analog ITFS operations.[13] Additional technical analyses of "cellularization" are

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[10] Comments of the Archdiocese of Los Angeles, at 5; see also Schwartz, Woods Comments, at 4-5 (incumbent ITFS operators should be permitted to expand services using the "proven and relatively inexpensive analog transmission technology"); Joint Comments of ITFS Parties, at 4 (right to operate and control the proposed system should remain with the ITFS licensee).

[11] Joint Comments of Dallas County Community College District, et al. ("Dallas Comments"), at 3-6.

[12] Dallas Comments, 3-6; see also Petition, Apps. C-D.

[13] Schwartz, Woods Comments, at 2-3.

necessary to demonstrate for ITFS licensees how their station operation would be enhanced, rather than jeopardized, by two-way transmissions.

Staff review of applications. Concern was also expressed regarding the proposal to eliminate the Commission's independent technical review of ITFS and MDS applications.[14] Some parties suggested that the interference issues raised by widespread use of cellularized transmission systems and two-way operations would be beyond the capability of ITFS licensees to evaluate. They recommended a policy that would require the new station to cure interference even if no objection is filed by the affected ITFS licensee, that is, the failure of an ITFS licensee to object would not be construed as a waiver of interference protection.[15] The Commission was asked to develop a different, less cumbersome and more effective procedure that places the burden of non-interference on the new applicant.[16]

One-day filing windows. The one-day filing window approach proposed in the Petition received criticism as impractical. As one set of comments notes, ITFS licensees may incur considerable costs because they would "be forced to evaluate numerous applications. . . conceivably as frequently as daily."[17]

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[14] See Northeastern Comments, at 5-6; Dallas Comments, at 7; PACE Comments, at 5-6.

[15] Joint Comments of ITFS Parties, at 5-6.

[16] Dallas Comments, at 7; PACE Comments, at 5-6.

[17] Dallas Comments, at 6-7.

Analog transmissions. Several parties expressed concern that present and future ITFS licensees should be able to operate in an analog format without the need to relocate, digitize, or otherwise alter their service due to use of adjacent channels for new services.[18] This would allow each ITFS licensee to retain the freedom to develop its system in either analog or digital format depending on the transmission system that best suits its educational needs and financial abilities.[19]

ITFS autonomy. A number of parties, including CTN, expressed concern over the continuing autonomy of ITFS stations in a "cellularized" system.[20] The Commission was asked to ensure that ITFS licensees do not lose control over their stations through "coercion by neighboring licensees or strong wireless cable operators."[21] These concerns arise from several aspects of the proposals, including, for example, allowing a wireless cable operator leasing excess capacity from an ITFS entity to be licensed for and operate low power boosters[22] and the difficulty

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[18] Comments of National ITFS Association ("NIA"), at 4; Schwartz, Woods Comments, at 4-5; Northeastern Comments, at 3-4.

[19] See Comments of the Archdiocese of Los Angeles, at 5; Schwartz, Woods Comments, at 4-5 (incumbent ITFS operators should be permitted to expand services using the "proven and relatively inexpensive analog transmission technology").

[20] See Comments of NIA, at 4; Comments of the Archdiocese of Los Angeles, at 5; Schwartz, Woods Comments, at 4-5.

[21] Comments of the Archdiocese of Los Angeles, at 5.

[22] Joint Comments of ITFS Parties, at 4.

of reversing the restructuring involved with a "cellularized" system to return the stations to the present service.[23]

In many cases, the discrepancies in the rules identified by the commenters go to the heart of the proposals in the Petition, indicating the necessity to develop additional information and to evaluate the appropriate rule or policy once that information has become available. In short, the comments confirm that substantial work is required on developing the proposals in the Petition before the Commission can move forward with well-reasoned rule and policy proposals.[24] By involving all ITFS and MDS interests in this process, the Commission can develop a rationale for the proposed rules which builds on and improves the rationale stated in the Petition.

III. A NEGOTIATED RULEMAKING WOULD PROVIDE A VEHICLE TO DEVELOP RULES ACCEPTABLE TO ALL INTEREST GROUPS.

After the submission of reply comments in this proceeding, the issue before the Commission will be whether to dismiss the petition or move forward to develop the proposed rules based on its recommendations. It is clear that both educational

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[23] Comments of NIA, at 4; Joint Comments of ITFS Parties, at 7; Northeastern Comments, at 6-7.

[24] The comments focus primarily on policy concerns raised by the principles set forth in the Petition. It is apparent that, given the complexity of the proposals in the Petition, the paucity of technical information provided in the Petition, and the short time frame for filing comments, none of the commenting parties have had an opportunity to address the substance of all the specific rules proposed in the Petition.

and commercial parties agree with the fundamental principle of enhancing the flexibility of ITFS and MDS licensees to engage in fixed two-way transmissions and that many ITFS licensees would be willing to work with wireless cable operators to effectuate the mutual benefits of the expanded ITFS and MDS services in a manner consistent with the proposals in the Petition.[25] Given the general support of the ITFS and MDS communities, CTN believes that the Commission should move forward to develop appropriate rules.

However, as is apparent in the comments, the Petition has not provided the Commission with a sufficient foundation to build the proposal into a set of well-grounded rules. The Commission essentially has before it only the framework of a useful concept which still requires substantial work before any concrete proposal can be adopted. Many legal, technical and policy issues should be resolved before the Commission proposes rules to develop the educational and commercial potential of "cellularized" ITFS and MDS stations. CTN believes that the active participation of all potentially affected interests is required in order to lay that foundation, and that a negotiated rulemaking committee could fill this role.[26]

In the past, negotiated rulemaking committees have provided the Commission with substantial useful information on which to base the development

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[25] Joint Comments of ITFS Parties at 3; Schwartz, Woods Comments, at 7.

[26] See 5 U.S.C. §§ 561-570. See generally Negotiated Rulemaking Act of 1990, Pub. L. No. 101-648, § 2 ("Negotiated rulemaking can increase the acceptability and improve the substance of rules, making it less likely that the affected parties will resist enforcement or challenge such rules in court").

of rules for new services.[27] Even when the parties have not reached consensus, the Commission has been able to use this information as the basis for proposed rules in a "Notice of Proposed Rule Making."[28] CTN believes that the substantial difference of opinion reflected in the comments about the direction of any rules for the provision of two-way services can be resolved only through debate of the numerous technical, policy and legal issues by the affected interests. Accordingly, CTN recommends that the Commission initiate a negotiated rulemaking for the proposals in the Petition.

III. CONCLUSION

For the reasons outlined above, the Commission should continue the process of developing rules to enhance the flexibility of ITFS and MDS services in a negotiated rulemaking with the opportunity for involvement of all potentially affected interests. Rules and policies should be adopted which preserve the instructional purpose of ITFS frequencies and take into account the interests and

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[27] See Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to a Mobile Satellite Service, 9 FCC Rcd 1094, 1100 (1994); Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to a Non-Voice, Non-Geostationary Mobile-Satellite Service, 8 FCC Rcd 8450, 8450 (1993) ("The parties' willingness to participate in the Commission's initial negotiated rulemaking process. . . has greatly assisted Commission staff and has streamlined this rulemaking process").

[28] Mobile Satellite Service, 9 FCC Rcd at 1100.

concerns of both the educational community and the commercial wireless cable industry.

Respectfully submitted,

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Date: May 29, 1997

CERTIFICATE OF SERVICE

I, William D. Wallace, hereby certify that I have on this 29th day of May, 1997, caused to be served true and correct copies of the foregoing "Reply Comments of Catholic Television Network, Inc." upon the following parties via hand delivery (indicated by an *) or first-class United States mail, postage prepaid:

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