DOCKET FILE COPY ORIGINAL

ORIGINAL

CROWELL & MORING LLP
1001 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20004-2595
(202) 624-2500
FACSIMILE (202) 628-5116

SUITE 1200
2010 MAIN STREET
IRVINE, CALIFORNIA 92614
(714) 263-8400
FACSIMILE (714) 263-8414

180 FLEET STREET
LONDON EC4A 2HD
44-171-413-0011
FACSIMILE 44-171-413-0333

WILLIAM D. WALLACE
(202) 624-2807
wwallace@cromor.com

EX PARTE OR LATE FILED

May 27, 1998

RECEIVED

MAY 27 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BY HAND DELIVERY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W. Room 222
Washington, DC 20004

RE: MM Docket No. 97-217 **EX PARTE PRESENTATION**

Dear Ms. Salas:

On May 26, 1998, representatives of the Catholic Television Network met with Helgi Walker, Legal Advisor to Commissioner Furchtgott-Roth, to discuss the issues identified on the enclosed presentation. Present at the meeting were:

Monsignor Michael J. Dempsey, President of Catholic Television Network;
Michael Lavery, Administrative Director for Instructional Television of the Archdiocese of New York;
Robert W. Denny, P.E., President of Denny & Associates, P.C.; and
William D. Wallace and Daniel R. Forman, Crowell & Moring LLP.

Pursuant to Section 1.1206(b) of the Commission's Rules, an original and one copy of this letter are being submitted for inclusion in the file referenced above.

Respectfully submitted,

W D Wallace

William D. Wallace

Enclosure

cc: Helgi Walker

No. of Copies rec'd 0+1
List A B C D E

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

CATHOLIC TELEVISION NETWORK

May 26, 1998

Amendment of Parts 1, 21 and 74 to Enable Multipoint Distribution Service and Instructional Television Fixed Service Licensees To Engage in Fixed Two-Way Transmissions

MM Docket No. 97-217
RM-9060

I. CATHOLIC TELEVISION NETWORK

A. CTN is an association of 18 Roman Catholic Archdioceses and Dioceses, which hold licenses in the Instructional Television Fixed Service ("ITFS").

B. CTN members are Archdioceses and Dioceses throughout the United States, including the San Francisco Bay Area, Boston, Brooklyn, Chicago, Dallas, Detroit, Los Angeles, New York, Orange, Orlando, Rockville Centre, San Bernardino, Youngstown, Buffalo, St. Louis and Wichita.

C. Each CTN member operates an accredited diocesan school system and is the licensee of one or more ITFS stations.

D. CTN's members provide educational programming to more than 500,000 students throughout the United States, and provide programming distributed by cable systems reaching millions of households.

E. CTN's members have been involved with ITFS since the proceeding in which the Commission established ITFS as a licensed service. Some of CTN's members have held ITFS licenses for more than 30 years.

F. CTN has participated in this rulemaking by filing comments and reply comments. It has proposed modifications to the proposed rules to make implementation of two-way transmissions more beneficial to the ITFS community.

G. CTN's main concerns in this proceeding are:

- Preservation of the requirement to engineer systems to eliminate the potential for interference into ITFS (i.e., protection from co- and adjacent-channel interference as well as protection from brute force overload from non-co- or non-adjacent channel stations)
- Preservation of the ITFS spectrum for educational uses
- Preservation of the autonomy of ITFS stations
- Protection of the ability of ITFS to grow as an educational resource
- Retention of the FCC Staff review of interference issues

II. EDUCATION-RELATED ISSUES

A. For the past 30 years, the Commission has reserved the ITFS spectrum for instructional use, and it is the only spectrum designated for instructional use in the United States. This instructional use should be preserved.

B. The Commission's policy on leasing ITFS spectrum to wireless cable operators is based on the financial benefits which ITFS entities acquire in leasing excess capacity. The policies permitting these benefits should be preserved.

C. ITFS and wireless cable operators have somewhat different perspectives on issues raised in the NPRM in MM Docket No. 97-217.

- ITFS operators need to reserve capacity for educational expansion; wireless cable operators want to resell all capacity available.
- ITFS entities are long-term providers of instruction in a market; wireless cable remains an as yet unproven business.
- ITFS operators need certainty to fulfill obligations to students and community; wireless cable operators are still in the process of developing commercial services and financial base.

D. These differences are likely to be aggravated by a new proposal by Petitioners (not included in NPRM) to require mandatory retuning of ITFS stations to "comparable facilities." Proposed Section 74.902(k).

- Makes more difficult the potential that ITFS licensees would be able to use two-way transmissions on their own channels
- Contains no language precluding reduction in frequency assignments to ITFS licensees (loss of excess capacity = loss of revenues)
- Suggests that ITFS and wireless cable will become antagonists in disputes over spectrum rather than partners in joint use of spectrum
- May preclude expansion of "distance learning" opportunities

E. The Commission should reject mandatory retuning for ITFS.

(k) The Commission shall require that an ITFS station retune to other ITFS or MDS channels in the 2500-2686 MHz band upon application filed by another ITFS or MDS licensee with facilities in the same market, where the requesting party agrees to bear the costs of the retuning of the transmission and any installed receive facilities and demonstrates that the retuned facilities will be comparable to the licensed facilities.

(1) Prior to submitting an application pursuant to paragraph (k), the applicant must provide the licensee with written notice requesting that the licensee retune to other channels in the 2.5 GHz band, agreeing to pay all costs associated with such retuning and demonstrating that comprable facilities are available.

(2) Service of the notice provided for in subparagraph (1) shall commence a period during which the parties can negotiate voluntary arrangements for retuning. At any time more than thirty (30) days after service of the notice, either party may terminate negotiations. If the negotiations lead to a voluntary agreement, the licensee shall then file an application with the Commission proposing to voluntarily change to other channels, which application will be treated like any other major modification application. If the negotiations are terminated without an agreement being reached, the proponent of the retuning proposal can then refer it to the Commission for resolution by submitting an application in the name of the licensee proposing a change in channels along with any other contingent applications necessary to effectuate the returning (such as a proposal by another licensee to retune its channels to make channels available for the proposed mandatory retuning). Notwithstanding any other provisions of this Part, applications filed in connection with a voluntary or Commission-coordinated retuning should be accepted at any time and cut-off from competing applications as of the close of business on the day of filing. However, in order to afford the Commission an opportunity to determine whether comparable facilities are available before a request for a Commission-coordinated retuning can be granted, applications filed by the proponent of retuning without the licensee's consent should not be eligible for processing pursuant to [citation to provisions for automatic or expedited processing of applications].

(3) For purposes of this paragraph (k), comparable facilities will be deemed available where it is possible for the existing facility to retune to other channels in the 2500-2686 MHz band while still receiving at least a 45 dB desired-to-undesired ("D/U") signal ratio from co-channel operations and a 0 dB D/U signal ratio from adjacent channel operations at registered ITFS receive sites and any protected service area. In those cases where the existing facility receives a lower D/U signal ratio at one or more locations, comparable facilities shall be deemed available where it is possible for the retuned facility to provide no lesser D/U signal ratio at those locations. In determining whether comparable facilities can be achieved, the requesting party may propose receive antenna upgrades and the replacement of pre-May 26, 1983 downconverters pursuant to §74.903(a).

* * * * *

25. In Section 74.903, paragraph (a)(3) would be amended and paragraph (b)(6) would be added to read as follows:

§74.903 Interference.

Petitioner's Ex parte

May 15, 1998

III. PROTECTION FROM INTERFERENCE FOR ITFS

A. Current rules require pre-grant demonstration of potential for interference into existing ITFS receive sites.

- Known interference paths (primarily, one-way video)
- Standardized analysis based on desired-to-undesired signal ratio at existing receive sites
- Staff review of pleadings prior to grant

B. Petitioners' proposed rules virtually eliminate the benefit of pre-grant interference analysis. See NPRM, ¶¶ 34-38

- Unknown interference paths
- Hypothetical interference analysis
- Petitioners recommend that Staff would not review interference prior to grant if no objections (See NPRM, ¶ 49)

C. Although current rules rely on pre-grant interference analysis to avoid interference, Petitioners are attempting to eliminate the usefulness of that analysis and force existing stations to rely on post hoc remedies.

- Reliance on post hoc remedies shifts the burden of preventing interference to incumbent (by initiating complaint)
- If no binding interference analysis is required prior to grant, there is no incentive to design system to preclude interference at existing sites
- Identifying source of interference post hoc would be difficult because there is no requirement to file notice of response transmitter sites

D. The Commission must provide a replacement for protection supplied by pre-grant interference analysis.

- 6 MHz guardband between commercial "upstream" and ITFS "downstream" eliminates co- and adjacent-channel interference
- Notification and testing procedure for response transmitters reduces risk of brute force overload
- Interim licensing procedure (final grant after demonstration of interference free operation) places the burden on applicants to engineer system not to cause interference