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EX PARTE OR LATE FILED

July 17, 1998

Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Amendment of Parts 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 and RM-9060: NOTICE OF EX PARTE COMMUNICATION

Dear Ms. Salas:

I am writing on behalf of the more than 110 parties that submitted the Petition for Rulemaking commencing this proceeding (the "Petitioners") in reply to certain filings made on July 2, 1998 in response to the Commission's June 12, 1998 *Public Notice* soliciting comment on, among other things, *ex parte* filings made by the Petitioners. While the Petitioners do not intend to respond to every one of the handful of filings critical of the Petitioners' submissions (some of which do little more than reiterate arguments to which the Petitioners have previously responded),[1/] the Petitioners are compelled to respond to certain points made by the Catholic Television Network ("CTN").

At the outset, it is worth noting that the filings submitted in response to the *Public Notice* evidence an overwhelming support for the Petitioners' most recent proposals to advance the deployment of two-way wireless broadband services in the Multipoint Distribution Service

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[1/] For example, EDX Engineering, Inc. submitted comments that did little more than reiterate prior complaints that the Petitioners' methodology for demonstrating compliance with the interference protection standards is overly complex. *See* Comments of EDX Engineering, Inc. (filed July 2, 1998). The Petitioners previously responded to similar complaints at pages 69-78 of their February 9, 1998 Reply Comments, and need not repeat those arguments here. The Petitioners find it ironic, however, that while their proposal has become somewhat more complex in an effort to mollify CTN and others, they are now being criticized for that complexity. Unfortunately, given the encumbered nature of the service, one cannot have both simplicity and conservative interference protection.

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("MDS") and the Instructional Television Fixed Service ("ITFS"). As it considers the continued assertions by CTN that the rules and policies proposed by the Petitioners for controlling interference are inadequate, the Commission can take solace in the number of ITFS licensees,[2] highly-respected technical consultants,[3] and technologically-sophisticated wireless

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[2] *See* Comments of the University of North Carolina, at 2 (filed July 2, 1998)("The Petitioners' proposal is highly protective against interference, and the burdensome proposal of CTN will impose costs far greater than the minuscule benefits of additional protection."); Comments of George Mason University Instructional Foundation, Inc., at 5 (filed July 2, 1998)("having reviewed the Petitioners' proposals, we believe that they fully protect our educational objectives and adequately address the legitimate concerns raised by educators."); Comments of NJN Public Television and Radio, at 1 (filed July 2, 1998)('the interference protection rules and policies proposed by the Petitioners in their ex parte filings fully protect our interests"); Comments of Valley Lutheran High School, at 2 (filed July 2, 1998)("We believe that the Petitioners' proposed interference protection rules and policies provide adequate protection of the ITFS interests and urge adoption of the proposals."); Wilson Technical Community College, at 1 (filed July 2, 1998)("Wilson believes that the Petitioners are to be applauded for crafting a regulatory approach that deftly balances the pressing need for expedited processing of applications and the deployment of new services against the requirement for reasonable protection against interference. . . . Wilson is particularly concerned that proposals advanced by [CTN], which apparently has secured licenses for the facilities it desires, would substantially delay ITFS licensing of others, without any significant improvement in the operating environment."); Comments of Pitt Community College, at 1 (filed July 2, 1998)("Pitt believes that the Petitioners' proposed interference protection rules and policies are fully protective of our interests, and we support their adoption."); Comments of Vance-Granville Community College, at 1-2 (filed July 2, 1998); Comments of Humanities Instructional TV Educational Center, Inc., at 1 (filed July 2, 1998)("We urge the Commission's adoption of Petitioner's proposals."); Comments of Indiana Higher Education Telecommunication System, at 1 (filed July 2, 1998)("Since the Petitioners' proposed interference protection rules and policies provide adequate protection of the ITFS interests, adoption of the proposals would serve the public interest."); Comments of UT/TV Houston, at 1 (filed July 2, 1998)("the Petitioners' proposed interference protection rules and policies provide adequate protection of the ITFS interests."); Comments of Region IV Education Service Center, at 3 (filed July 2, 1998)("the Petitioners' proposal fully protect our educational objectives and adequately address the legitimate concerns raised by educators.").

[3] Comments of Delawder Communications, Inc., at 1 (filed July 2, 1998)["Delawder Comments"]("As a telecommunications consulting firm which has participated intensively in the design, study and application work required of numerous ITFS and MDS stations, we believe that the Petitioners have successfully crafted a regulatory regime that protects existing

(continued...)

communications equipment manufacturers[4] who confirmed that those rules and policies are quite conservative in affording protection against interference. Indeed, the refinements proposed in the Petitioners' recent *ex parte* filings have not only convinced BellSouth Corporation of the conservative nature of the Petitioners' interference protection regime,[5] but

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[3] (...continued)
MDS and ITFS operations, while at the same time permits the rapid deployment of two-way facilities in a manner that will be commercially viable.").

[4] *See, e.g.* Comments of Motorola, Inc., at 6 (filed July 2, 1998)["Motorola Comments"]("Motorola has reviewed the proposed interference analysis and believes that, overall, it is a sensible and conservative approach . . .."); Comments of ADC Telecommunications, Inc., at 2 (filed July 2, 1998)("Between the proposed retention of the 0 dB desired-to-undesired adjacent channel signal requirement, the conservative methodology for determining satisfaction of that requirement, the requirement that interference studies be conducted and served on adjacent channel licensees, the 60 day period for adjacent channel licensees to petition to deny applications for authority to construct two-way facilities, and the 'safety net' of requiring the response station licensee to cure any interference it causes, no ITFS operation is jeopardized by adoption of the petitioners' proposals."); Comments of Comwave, at 2 (filed July 2, 1998)["Comwave Comments"]("Our engineers have confirmed that the methodologies proposed by the Petitioners are extremely conservative."); Comments of Conifer Corp, at 1-2 (filed July 2, 1998)("We believe the rules proposed by the Petitioners, along with the methodologies aimed at demonstrating compliance with those rules, are reasonable and just . . . It is our opinion that the rules proposed by the Petitioners are both practical and conservative."); Comments of Stanford Telecom, at 2 (filed July 2, 1998)("the interference concerns expressed by CTN are overstated and without merit."); Comments of Hybrid Networks, Inc., at 2 (filed July 2, 1998)["Hybrid Comments"]("Although CTN has apparently retreated from its initial proposal for a 24 MHz guardband, even its current call for establishment of a 6 MHz guardband is unduly restrictive and could, as a practical matter, preclude many ITFS licensees from ever deploying two-way services on their own channels"); Comments of California Amplifier, Inc., at 1 (filed July 2, 1998); Comments of Pacific Monolithics, Inc., at 2 (filed July 2, 1998)["PacMono Comments"]("Our engineering team has reviewed the methodologies proposed by the petitioners and confirmed that they should be more than adequate to protect CTN and other operations. Recent revisions made during the rules process provide even more insurance to CTN's concerns. (And may indeed by overkill).")

[5] *See* Further Comments of BellSouth Corp. and BellSouth Wireless Cable, Inc., MM Docket No. 97-217 (filed July 2, 1998)["BellSouth Comments"]. Of course, they were not the only wireless cable operators to express their support for the Petitioners' proposals. *See, e.g.*
(continued...)

have even raised some concerns that the refined proposal will overly protect existing MDS and ITFS facilities and deter the development of two-way facilities.[6] It is against this backdrop that the Commission should weigh the continued efforts of CTN to hamstring those educators and commercial system operators who desire to deploy two-way wireless broadband communications facilities.

CTN's Guardband Proposal Is Based On A Fundamentally Flawed Understanding Of The Petitioners' Proposed Methodology For Predicting Compliance With Long-Established Interference Protection Rules.

It should come as no surprise to the Commission that the overwhelming majority of those commenting on the technical issues raised by the *ex parte* comments in this proceeding have sided with the Petitioners and not with CTN. Although CTN would have the Commission believe that it, and it alone, is concerned about interference issues, that is hardly the case. Commercial service providers will have to assure their subscribers of reliable service if they are to succeed in the marketplace. Educators will need similar levels of reliability if they are to migrate from slower landline services to high-speed ITFS-based voice and data services. In short, if educators and commercial operators are to succeed in using MDS and ITFS spectrum for the distribution of wireless broadband services, both upstream and downstream communications must be free of harmful electrical interference.

As a result, the highly-regarded technical consultants retained by the Petitioners to develop interference protection rules were tasked with assuring that the rules protect existing

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[5] (...continued)
Comments of Wireless One, Inc., MM Docket No. 97-217, at 1 (filed July 2, 1998)("the Petitioners are to be commended for proposing a set of interference protection rules that both protect existing MDS and ITFS facilities and allow the rapid deployment of two-way facilities whenever possible consistent with affording interference protection to incumbents."); Comments of Heartland Wireless Communications, Inc., MM Docket No. 97-217, at 1 (filed July 2, 1998)("Although the Catholic Television Network ("CTN") would have the Commission believe that substantial adjacent channel interference could be introduced under those rules, the proposed rules are highly protective"); Comments of American Telecasting, Inc., MM Docket No. 97-217, at 4 (filed July 6, 1998)("Retention of the 45 dB and 0 dB D/U ratios, coupled with the requirements that a conservative methodology be employed to demonstrate compliance before securing a license and that any unpredicted interference be cured, renders unnecessary the additional regulatory burdens, such as guardbands and detailed staff review of interference studies, proposed by CTN to avoid adjacent channel interference.).

[6] *See* Motorola Comments, at 6-7; Hybrid Comments, at 1-2; Comwave Comments, at 2; Delawder Comments, at 1; PacMono Comments, at 2.

MDS and ITFS facilities, many of which will be used for downstream transmissions in conjunction with broadband service offerings. To accomplish that objective, they crafted rules that require the proponent of any response station system to demonstrate compliance with the long-standing 0 dB adjacent channel and 45 dB cochannel desired-to-undesired ("D/U") interference protection ratios. Illustrative of how conservative the proposed rules are, those levels were retained despite testing conducted by the Advanced Television Test Center and by the Petitioners which shows that those benchmarks far exceed the levels necessary to protect against digital interference. Those D/U ratios have proven quite conservative, even in the analog world — an informal canvas of the leading wireless cable attorneys and engineers uncovered just a handful of cases of actual interference in the MDS and ITFS over the past fifteen years — and will be even more in a digital environment.

Not only did the Petitioners' technical experts retain conservative interference protection benchmarks, but they have developed a conservative methodology for demonstrating compliance with those benchmarks. In response to concerns expressed during the course of this proceeding by other parties, by the Commission staff, and by the Petitioners' technical experts themselves, the methodology has been refined twice, the most recent version having been filed with the Commission on June 5, 1998 (the "Revised Methodology"). That methodology requires the applicant for a response station hub authorization to make a series of worst-case assumptions in demonstrating that every MDS and ITFS receive site entitled to 45 dB cochannel or 0 dB adjacent channel protection receives it. These worst case assumptions include:

- In the case of a TDMA system, the applicant must assume that for each frequency and antenna sector of the proposed response station hub, a response station is operating at all times from the grid point within each sector that is most likely to cause interference to the receive site being analyzed, although it is unlikely that the worst-case response stations in all sectors and on all frequencies will ever operate simultaneously. This assumption increases the level of undesired signal predicted at the receive site being studied, resulting in more conservative results.

- In the case of a CDMA system, the applicant must assume that for each frequency and for each region of the proposed Response Service Area ("RSA"), *every single response station that is proposed to operate simultaneously* is operating at all times from the grid point within the region most likely to cause interference. Again, of course, this is highly unlikely to happen in the real world, leading to very conservative results.

- The height above sea level of the site of each response station must be assumed to be the highest point in the area surrounding the grid point, although in most

cases the actual height above ground will be less than the maximum. Thus, terrain shielding will often exist that is not considered by the Revised Methodology.

- Similarly, the study must assume that each response station operates utilizing the maximum height of the transmitting antenna above ground requested for the relevant class of response stations, although most response station transmitting antennas will be located at heights lower then the maximum requested. Again, this means that terrain shielding will often exist that is not considered by the Revised Methodology.

- The study must assume that each response station operates utilizing the maximum power requested for its class of response stations, although most response stations will actually operate with less power than the maximum. Thus, the predicted level of undesired signal at the site being studied is likely to be artificially inflated, resulting in even more conservative results.

- The study must assume that each response station is operated with a hypothetical "worst case" antenna pattern.

- As noted by Motorola in its comments, the Revised Methodology conservatively assumes away shielding from buildings or foliage, although in reality both will reduce the potential for interference.[7]

When stripped of its rhetoric, CTN's latest filing essentially contends that despite all of the conservatism built into the Revised Methodology, it still does not adequately predict compliance with the 0 dB adjacent channel interference protection standard.[8] Upon careful review, however, it can be seen that *CTN's most recent filing evidences fundamental misunderstandings regarding how the methodology is to be employed.*

First, the objections raised by CTN are predicated on CTN's misconception that "the petitioner's proposed interference prediction methodology is based on an assumption of a uniform distribution of response stations."[9] CTN's objection to the Revised Methodology apparently stems from its concern that "if the RSA were drawn in such a way that it enclosed both a small area in which a [*sic*] virtually all of the response stations would be deployed and

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[7] *See* Motorola Comments, at 6-7.

[8] *See* Comments of CTN, at 6-7 (filed July 2, 1998)["CTN Comments"].

[9] CTN Engineering Statement, at 7.

a much larger area in which no response stations would be deployed, the interfering stations would be clustered in a manner not anticipated by the petitioner's methodology."[10]

The Petitioners do not disagree that *if* applicants were free to specify the size of their RSA without restriction, and then were permitted to conducted interference studies assuming a uniform distribution of response stations within those RSAs, the results could prove misleading if response stations were then actually clustered rather than uniformly distributed. However, *the Petitioners' methodology for analyzing potential interference does not assume a uniform distribution of response stations.* In its initial iteration, the methodology employed what came to be known as the "zip code test" to mandate that regions be drawn in a manner that precluded precisely the kind of gerrymandering that concerns CTN. In response to concerns regarding the zip code test, the Revised Methodology calls for a simpler, albeit far more conservative, approach to the problem. *As note above, the Revised Methodology requires one to assume that all of the simultaneously operating response stations are located at the sites most likely to cause interference.* In other words, not only are response stations not uniformly distributed for analysis purposes, they are concentrated at the very grid point most likely to cause interference!

Second, CTN is under the mistaken impression that because the so-called "analysis line" called for by the Revised Methodology is located one-half mile outside of the proposed RSA, "the petitioner's interference prediction methodology fails to account for ITFS receive sites located inside the RSA."[11] That simply is not the case, and reflects a fundamental misunderstanding of the role of the analysis line in performing interference analyses. The analysis line merely is used to determine the adequacy of the grid spacing used for subsequent interference analyses (*i.e.*. to assure that there can be no narrow lobes of radiation from any antennas in the system that will be unaccounted for when the interference analyses are conducted).[12] It has absolutely nothing to do with defining the area in which an ITFS facility is entitled to interference protection. Indeed, in contrast to the current rules that only require protection of ITFS facilities within 50 miles of a proposed new or modified facility, the Petitioners' proposed rules mandate that any registered ITFS receive location within 100 miles of the proposed response station hub or any ITFS protected service area with center coordinates

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[10] *Id.*

[11] *Id.* at 8.

[12] The location of the analysis line and the spacing of the analysis points on that line are intended to guarantee that the peak signals from beamwidths as narrow as five degrees will not be missed in any analyses. Since such peaks can be no more than five degrees apart at ½ mile outside of the RSA, they will be tightly spaced within the RSA, and as a result will appropriately impact the study of interference to any nearby receive site.

within 100 miles of the proposed response station hub be studied for potential interference from a cochannel or adjacent channel response station.[13] While CTN is apparently concerned that "it even would be possible for the response station antennas to be oriented toward the front of the ITFS receiving antenna if the RSH were located behind the ITFS receive site," the Revised Methodology would result in a prediction of interference in such a case unless the separation between the receive site and the response station were such that the cochannel and adjacent channel D/U ratios could be met. As such, the fears expressed by CTN simply cannot materialize.

In short, the rules proposed by the Petitioners are extremely protective of adjacent channel facilities, rendering unnecessary the imposition of an artificial guardband. While cases certainly will arise where adjacent channel operation of response stations cannot be conducted consistent with the 0 dB adjacent channel D/U benchmark, there will also be cases in which CTN's proposed guardband could prevent the deployment of two-way facilities, despite the fact that no interference will result. As such, adoption of CTN's guardband will unnecessarily result in inefficient use of the spectrum and preclude ITFS licensees from deploying wireless broadband services.

Imposing Secondary Status On Response Station Hubs Would Effectively Preclude The Development Of Two-Way Services By ITFS Or MDS Licensees.

In a move that belies any suggestion that CTN is supportive of those ITFS licensees who desire to deploy two-way services, CTN is now urging the Commission to restrict response station hubs to secondary status with respect to any cochannel or adjacent channel ITFS facility as close as 35 miles from the hub. In other words, under CTN's proposal response station hubs would be required to accept interference from any cochannel or adjacent channel ITFS station at least 35 miles from the hub, even if that interfering station is first licensed long after the response station hub becomes operational. Simply stated, adoption of such a proposal would sound a death knell for any ITFS or MDS licensee contemplating using its channels for upstream services or leasing excess capacity for commercial upstream services.

As noted above, Petitioners' objective in crafting the proposed rules has been to afford all facilities, including response station hubs, no more, but no less, interference protection than they need in order to operate. Save for CTN, no one would seriously argue with the proposition that unless the response station hub is entitled to an appropriate level of interference protection, two-way service is doomed. Educators and commercial operators alike will be loathe to invest in two-way facilities, knowing that the most important component of the network – the location where all return paths terminate – could be subject to interference. The Petitioners' technical

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[13] *See* Letter from Paul J. Sinderbrand to Magalie Roman Salas, Proposed Revisions to Sections 21.909(c)(3)(iv) and 74.939(c)(4)(filed June 5, 1998).

experts have labored long and hard to develop rules that will provide fair interference protection to the hub. Initially, the Petitioners proposed that the response station hub be entitled to interference protection based on the same 0 dB and 45 dB D/U ratios applicable to other MDS and ITFS receivers, but assuming plane polarized, omnidirectional antennas. In response to concerns that hubs would be unduly difficult to protect under this scheme, the Petitioners' technical experts have sought to provide an alternative measure of interference protection -- one that provides sufficient protection to assure a viable service, but does not unduly preclude new or modified service by neighbors. Coordinating with a variety of engineering consultants and equipment manufacturers, the Petitioners have refined their approach on several occasions, with the final version being submitted in the Revised Methodology.

Significantly, CTN makes no effort to even argue that the level of protection afforded to response station hubs under the Revised Methodology exceeds that necessary for hubs to properly operate.[14/] Rather, CTN merely contends that since protecting a response station hub could preclude future new or modified ITFS facilities, response station hubs should not be protected.

Of course, the Petitioners do not deny that their proposed rules for protecting response station hubs would have a preclusive effect on new or modified ITFS facilities — the very nature of interference protection rules is to preclude those facilities which will interfere with previously-proposed facilities. At bottom, CTN is attempting to impose its value judgement (that use of ITFS channels for response stations has less educational value that use for other purposes) on the ITFS community at large.[15/] The Petitioners, who include over 60 ITFS

[14/] It should be noted that CTN mischaracterizes the Petitioners' latest proposal when it contends that "the ITFS applicant may demonstrate that the new or modified ITFS facility provides at least a 45 dB desired-to-undesired signal ('D/U') ratio to co-channel response station hubs, and at least a 0 dB ratio to an adjacent-channel response station hub." CTN Comments, at 12-13. In fact, as noted above, the Petitioners' January 8, 1998 Comments in response to the *Notice of Proposed Rulemaking* proposed eliminating the 45 dB and 0 dB D/U benchmarks after they were the subject of criticism from commenting parties. *See* Comments of Petitioners, at 66-71 (filed Jan. 8, 1998). On May 15, 1998, the Petitioners submitted revised rules that incorporated that proposal. Sections 21.909(h)(1) and 74.939 (h)(1) of the rules submitted by the Petitioners at that time make clear that the 45 dB and 0 dB ratios of Sections 21.902 and 74.903 are no longer to be utilized in analyzing potential interference to response stations hubs, but that restrictions based on power levels and noise floors are to be employed instead. The Petitioners are at a loss to explain CTN's error.

[15/] The Petitioners find it ironic that Crowell & Moring is now concerned that allowing an ITFS licensee to establish a response station hub would be unduly preclusive of new ITFS

(continued...)

licensees, believe that in this regard CTN is out of touch with the ITFS community. In essence, CTN says that an ITFS licensee should be effectively barred from "turning around" a channel because some newcomer may sometime in the future be prevented from developing new downstream facilities due to interference protection requirements. The Commission does not prevent ITFS licensees from moving to taller towers, or from increasing power, or from making a myriad of other changes, despite the fact that such changes may impact the ability of an adjacent channel licensee to make its own modifications in the future. Why should the "turning around" of a channel be treated any differently?

CTN Continues To Ignore The Arguments Advanced By Petitioners Against Draconian Solutions To The Minuscule Potential For Brute Force Interference.

Finally, CTN continues to call upon the Commission to mandate a testing program that would delay deployment of response stations in some cases for 30-days or more in order to address CTN's fears of so-called "brute force overload" interference. The Petitioners have previously responded to CTN's proposal at length, so will just reiterate several central points here.

- The Petitioners have agreed that the licensee of any facility causing brute force overload should be required to cure the resulting interference -- the debate is solely over whether draconian burdens should be imposed on licensees before they can deploy a response station.

- CTN's proposal for a 30 day testing period is a solution in search of a problem. The Petitioners have provided detailed studies establishing under "real world" conditions, downconverter overload is likely to be a potential problem less than 0.01% of the time and that even under "worst case" conditions, the potential for brute force interference to occur is far less than 1%. *See* Petitioners' January 8th Comments, at 73-90. CTN has never refuted these demonstrations.

- The Petitioners have identified a variety of techniques for avoiding brute force interference that can be employed prior to inaugurating service, including cross-polarization of facilities, the provision of improved downconverters and the addition of filtering at ITFS receive sites. *See id.* At 90-99. CTN has never

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[15/] (...continued)
facilities when not long ago it was advancing a far more "preclusive" proposal under which the commercial MDS BTA auction winner would have the right to unused ITFS spectrum within its BTA. *Amendment of Parts 21 and 74 of The Commission's Rules With Regard to Filing Procedures in The Multipoint Distribution Service And in The Instructional Television Fixed Service*, 10 FCC Rcd 9589, 9599 (1995).

refuted the Petitioners' contention that these techniques can be effectively used to cure interference.

- Response station licensees have a strong incentive to employ those techniques before deploying response stations to minimize the risk of having to disrupt service. As Crowell & Moring has previously stated to the Commission, so long as commercial operators have an obligation to cure interference to ITFS receive sites, the Commission can trust that they will avoid interference in the first place so that commercial services will not be disrupted. *See* Petitioners' February 9th Reply Comments, at 59-60.

- The Petitioners have proposed far greater protection against brute force interference than WCS licensees must afford MDS and ITFS licensees. *See id.* at 61-63.

- The Petitioners have agreed to accept a requirement that the licensee of a response station hub notify surrounding MDS and ITFS licensees prior to inaugurating service from that hub. *See id.* At 63. Thus, any ITFS licensee suddenly suffering interference should have no difficulty identifying the licensee responsible. Moreover, under the rules proposed by the Petitioners to address block downconverter interference, the licensee of a response station would be required to disclose the location of individual response stations as part of its obligation to cooperate *if* any interference occurs. Nonetheless, CTN continues to call for the unreasonable establishment of a "notification zone" and the requirement that the licensee of any response station installed within the notification zone send notice of the location of the response station by certified mail, return receipt requested prior to the installation. However, on balance the costs of requiring identification of all response station locations far outweigh the benefits. Significantly, CTN has not addressed the practical problems associated with its proposal. For example, the location of commercial subscribers is highly proprietary information that wireless cable operators closely guard. As BellSouth Corp. correctly noted in its July 2, 1998 filing, "CTN's notion of sending lists of subscriber locations to third parties raises serious subscriber privacy and competition concerns."[16/] Before the Commission requires commercial operators to identify the location of their two-way subscribers to an unaffiliated ITFS licensee (who may be leasing their excess capacity to competitive broadband service provider) even though no interference is occurring, the Commission must provide an iron-clad mechanism that assures the information will be maintained in the strictest confidence and

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[16/] BellSouth Comments, at 5.

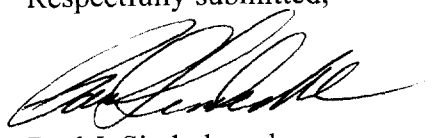
that awards damages to the commercial operator if the ITFS licensee discloses the proprietary information. The Petitioners' approach minimizes the potential risk of improper disclosure of sensitive information by preserving the confidentiality of proprietary subscriber information until interference occurs, while affording ITFS licensees the prior notice of hub activation they need in order to identify the response station licensee likely causing any interfering.

- CTN's proposed 30 day period for testing of response stations will impose unnecessary delays in the inauguration of service that the marketplace will not accept. Potential customers will turn to other wireless broadband service providers capable of providing a rapid response to a service request. *See id.* at 53-59.

In short, the overwhelming majority of those commenting in response to the Commission's most recent *Public Notice*, including ITFS licensees, technical consultants and equipment manufacturers, have recognized that the Petitioners' proposals strike an appropriate balance by affording existing MDS and ITFS facilities substantial protection against interference, while still permitting two-way wireless broadband services to be deployed in a commercially-viable timeframe. Meanwhile, CTN continues to call for highly impractical and totally unnecessary restriction, at least in part because it is laboring under material misconceptions regarding the Revised Methodology. The time has come for the Commission to put CTN's arguments to rest, so that wireless cable operators and educators alike can begin to enjoy the substantial benefits two-way use of MDS and ITFS will bring.

Please contact the undersigned should you have any questions regarding this *ex parte* presentation.

Respectfully submitted,



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