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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
WASHINGTON, D.C. 20541

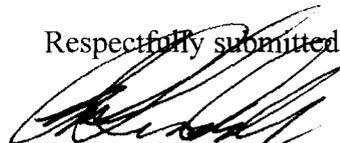
Re: Amendment of Parts 21 and 74 To Enable Multipoint Distribution Service and Instructional Television Fixed Service Licensees To Engage In Fixed Two-Way Transmissions -- MM Docket No. 97-217 and RM-9060: NOTICE OF EX PARTE COMMUNICATION

Dear Ms. Salas:

On July 15, 1998, Gerald Stevens-Kittner of CAI Wireless Systems, Inc., George Harter, III of Hardin & Associates, Inc. and the undersigned met with Anita Wallgren, Legal Advisor to Commissioner Susan Ness, on behalf of the group of over 110 participants in the wireless cable industry that submitted the petition for rulemaking that commenced this proceeding (the "Petitioners") to discuss several issues raised by recent filings in this proceeding. A summary of the presentation is attached.

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

Respectfully submitted,



Paul J. Sinderbrand

Counsel to the Petitioners

Attachment

cc: Anita Wallgren

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SUMMARY OF PRESENTATION

July 15, 1998

- INTRODUCTION – The Petitioners’ objective has been to provide an interference-free operating environment that allows the deployment of response stations without delay.
- THE PETITIONERS’ PROPOSAL IS HIGHLY PROTECTIVE OF ITFS AND MDS DOWNSTREAM FACILITIES
 - Petitioners’ proposal for rules requiring a cure of interference are a “safety net,” not the primary vehicle for curing interference.
 - 45 dB and 0 dB D/U ratios have been retained for defining interference, despite results of testing that show such ratios to be overly-protective in a digital environment.
 - Methodology for determining compliance with 45 dB and 0 dB D/U ratios is very conservative, as it is based on series of worst case assumptions regarding response station location, power, antenna height and pattern. *See Revised Methodology, at 4-8.*
 - CTN’s latest filing is based on an erroneous contention that the methodology is based on a uniform distribution of response stations within RSA. *See July 2nd CTN Joint Engineering Exhibit, at 6-7.* In fact, *the methodology requires an assumption that all simultaneously operating response stations are located at “worst case” grid point. See Revised Methodology, at 6.*
 - CTN also erroneously suggests that ITFS receive locations inside of the so-called “analysis line” will not be protected from interference. *July 2nd CTN Comments, at 8-9.* The analysis line is only used for determining satisfactory grid spacing, and has no material impact on the protection of ITFS receive sites within the line. *All ITFS receive sites will be protected, whether inside or outside of the analysis line. See Revised Methodology, at 8.*
 - Adoption of CTN’s guardband proposal is both unnecessary and could have adverse consequences.
 - Retention of conservative 0 dB D/U ratio, coupled with conservative methodology, provides adequate protection against adjacent channel interference. No FCC-mandated guardband is necessary.
 - Adoption of guardband rule will prevent some ITFS licensees will from using their own channels for 2-way communications. Since most ITFS licensees hold channels interleaved with another ITFS licensee, they will need consent under CTN proposal, even if they can meet the 0 dB D/U benchmark.

- Inadequate channel capacity may be available for 2-way systems if ITFS licensees are obdurate or demand payment of "greenmail" when asked to consent to adjacent channel return path use.

- RESPONSE STATION HUBS MUST BE AFFORDED PROTECTION FROM INTERFERENCE

- Petitioners have sought to afford response station hub a level of interference protection that assures interference-free service, without unduly restricting flexibility of cochannel and adjacent channel licensees to employ their spectrum.
- Neither commercial operators nor educators will invest in two-way systems in response station hub is deemed "secondary."
- CTN does not even attempt to argue that response station hubs can successfully operate with less interference protection than the Petitioners now propose.

- IN LIGHT OF THE MINUSCULE RISK OF BRUTE FORCE OVERLOAD AND THE MANY TECHNIQUES FOR CURING IT, THE BURDENSOME TESTING PROGRAM ADVOCATED BY CTN SHOULD BE REJECTED.

- The Petitioners have provided detailed studies establishing that under "real world" conditions, the potential for brute force interference to occur is less than 0.01%. *See* Petitioners' January 8th Comments, at 86-90.
- The Petitioners have identified a variety of techniques for avoiding brute force interference that can be employed prior to inaugurating service. *See id.* At 90-99.
- Response station licensees have a strong incentive to employ those techniques before deploying response stations to minimize the risk of having to disrupt service.
- The Petitioners have offered to provide far greater protection against brute force interference than WCS licensees must afford MDS and ITFS licensees. *See* Petitioners' February 9th Reply Comments, 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.
- 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 service providers capable of providing more rapid responses. *See id.* at 53-59.