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February 4, 1999

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

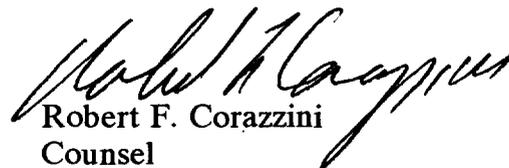
Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

Re: **Opposition to Petition for Reconsideration**  
**MM Docket No. 97-217**  
**File No. RM-9060**

Dear Ms. Salas:

Transmitted herewith on behalf of Region IV Educational Service Center, George Mason University Instructional Foundation, Inc., Humanities Instructional TV Educational Center, Inc., Valley Lutheran High School, Indiana Higher Education Telecommunications System, Views on Learning, Inc., Butler Community College, Denver Public Schools and Minnesota Public Radio, is an original and five (5) copies of their joint Opposition to the Instructional Telecommunications Foundation, Inc.'s Petition for Reconsideration in MM Docket No. 97-217. Should there be any questions concerning this material, please communicate directly with the undersigned.

Very truly yours,

  
Robert F. Corazzini  
Counsel

Enclosure

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**FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY**

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

<b>In the Matter of</b>	)	
	)	
<b>Amendment of Parts 1, 21 and 74 to Enable</b>	)	<b>MM Docket No. 97-217</b>
<b>Multipoint Distribution Service</b>	)	
<b>And Instructional Television Fixed</b>	)	<b>File No. RM-9060</b>
<b>Service Licensees to Engage in Fixed</b>	)	
<b>Two-Way Transmissions</b>	)	

**OPPOSITION TO PETITION FOR RECONSIDERATION**

Comes now, Region IV Education Service Center, George Mason University Instructional Foundation, Inc., Humanities Instructional TV Educational Center, Inc., Valley Lutheran High School, Indiana Higher Education Telecommunications System, Views on Learning, Inc., Butler Community College, Denver Public Schools and Minnesota Public Radio (collectively, the "ITFS Commenting Parties"), by the undersigned counsel to present their Opposition to the Petition for Reconsideration of the above-captioned Report & Order<sup>1/</sup> filed on December 28, 1998 by the Instructional Telecommunications Foundation, Inc. ("ITF"). In support thereof, the following is respectfully submitted.

ITF expresses its general support for the Federal Communications Commission's ("FCC") efforts to expedite the licensing process for the two-way operation for ITFS and MMDS stations. However, ITF submits that the Commission committed a serious error

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<sup>1/</sup> In the Matter of Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and Instructional Television Fixed Service Licensees to Engage in Fixed Two-Way Transmissions, Report and Order, MM Docket No. 97-217, FCC 98-231 (released Sept. 25, 1998) ("Order").

in permitting the grant of multiple applications which would otherwise be considered mutually exclusive. ITF thereupon urges the Commission to revise its Order so as to require Commission staff review of all applications filed during the initial window and of all subsequent applications filed during the later rolling one day windows, and only applications which are found not to be mutually exclusive and against which no Petition to Deny has been filed are to be granted. "All other applications would be processed according to the current rules, or by some other tie-breaking procedure that would provide a mechanism for resolving mutually exclusive applications."<sup>2/</sup> In essence, ITF suggests a return to the failed processing procedures of the past, and therein lies the defect. A return to processing according to the current rules would mean a return to the unacceptable delays of the past which would now confront the ITFS Commenting Parties and others seeking to develop a two-way ITFS operation.

In the Report & Order the Commission recognized that to make two-way service a reality an expedited processing and grant procedure was necessary. The Commission further recognized that if two-way service was in fact to develop, a fundamental change from traditional Commission processing procedures was required. The Commission had become convinced "that failure to adopt an expedited processing system will be seriously detrimental to the provision of two-way service" and concluded that the processing procedures adopted in the Order "will dramatically expedite the licensing process".<sup>3/</sup> ITF recognizes the need to dramatically expedite the licensing process. Furthermore,

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<sup>2/</sup> ITF Petition for Reconsideration at page 11.

<sup>3/</sup> Order at ¶ 61.

ITF does not dispute the fact that the certification and same day application grant procedure will accomplish that desired result. Rather, ITF simply condemns the procedure to failure on the basis of its recitation of a few purely speculative and self-serving worst case scenarios which for the reasons enunciated below, are neither logical nor likely. While undoubtedly the obstructionist and greenmail perpetrators whom ITF rightly decries, will always be with us, we have surely learned one thing. The old system which ITF would have the Commission retain, did not solve that problem but unfortunately simply added an additional element of delay. While resistance to change by incumbents may be understandable, change is inevitable.

In the Comments initially filed by the ITFS Commenting Parties in the proposed rule making in January of 1998, the Parties argued that it was imperative that an expedited processing procedure be implemented to afford the applicants and the Commission a significant vehicle for the achievement of the benefits which all recognized would flow from two-way service. The ITFS Commenting Parties recognized that while no procedure will ever be perfect, the existing window filing procedure has frustrated efforts to make distance learning education available in many areas. The worst case scenarios presented by ITF are circular arguments that rely upon the assumption that cooperation and resolution of conflicts by the applicants will be the exception rather than the rule. Nowhere does ITF convincingly demonstrate a realistic benefit for an applicant who is unwilling to cooperate in order to obtain interference-free facilities. The ITFS premise is cynical and not reflective of the real world. Educational institutions, whether elementary and high school or on the college and university level,

exist in a collegial environment. Cooperation between and among educators is not the exception as ITF would have us believe, but rather the norm.

In arriving at its negative conclusions, ITF misses the larger picture that MDS/ITFS two-way operation by its very nature requires cooperation between applicants and operators in adjoining markets. ITF assumes that applicants will have a compelling interest in resolving technically incompatible proposals only where the specter of Commission action to resolve mutual exclusivities exists. However, it is clear that the dis-incentive to resolve incompatibilities is much greater where the applicant can rely upon the fact that the Commission must intervene. Indeed, this is the current system which has resulted in significant delays. Incentive to resolve differences arises when the likelihood of loss, or conversely gain, falls equally on both parties. The bad case scenarios presented by ITF ignore the much more compelling factor that intelligent applicants with a great deal to gain would seek a solution in which both could operate rather than one in which neither could operate securely. To justify retention of the failed system, ITF asks the Commission to assume the worst and most illogical cases rather than to recognize that with whatever shortcomings, the FCC has indeed fashioned a better solution.

Finally, it should be pointed out that ITF's proposals actually resurrect a thorny issue which the Commission avoided in the adoption of its procedure. In its Auction

Order<sup>4/</sup> the Commission expressed a possibility that mutually exclusive ITFS major modification applications may invoke the auction process. Although the ITFS Commenting Parties in their own Petition for Reconsideration and Clarification in this proceeding disagree with that premise, the ITF proposal would force the Commission to resolve this issue. Thus, the "solution" which ITF seeks may well be an auction of these modification applications. In fact, ITF argues that an auction is preferable to the new grant procedures when on page 5 of its petition it gives as one of the reasons for rejecting the Commission's new processing procedures, the fact that the U.S. Treasury will be deprived of a financial dividend from the ITFS applicants. There is no question but that a national ITFS provider with excess channel capacity leases in major cities throughout the country would have a huge financial advantage over local ITFS providers such as Valley Lutheran High School, an ITFS Commenting Party herein. The ITFS Commenting Parties object strenuously to the possibility of an auction. Among them are accredited educational institutions of various sizes which could find themselves at a severe disadvantage in an auction against a national ITFS service provider. The downside risk and further delay inherent in the ITF suggestions appear to the ITFS Commenting Parties to be significant while the Commission's new procedure presents a fair solution.

In conclusion, despite its doomsday recitations, ITF has totally failed to make a compelling case supporting its basic assumption that under the Commission's new

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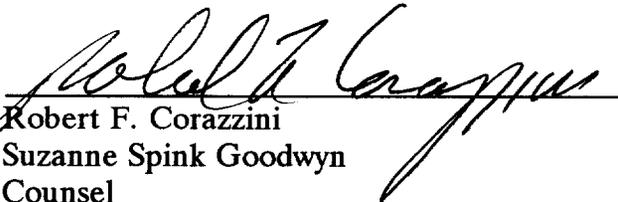
<sup>4/</sup> In the Matter of Implementation of Section 309(j) of the Communications Act - Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, MM Docket No. 97-234 (August 18, 1998).

processing procedures the applicants will have reason not to cooperate. As a result, ITF has presented absolutely no rational basis upon which to jettison the Commission's new streamlined procedures in favor of a return to the past.

Respectfully submitted,

**Region IV Education Service Center  
George Mason University Instructional Foundation, Inc.  
Humanities Instructional TV Educational Center, Inc.  
Valley Lutheran High School  
Indiana Higher Educational Telecommunications System  
Views on Learning, Inc.  
Butler Community College  
Denver Public Schools  
Minnesota Public Radio**

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February 4, 1999

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**CERTIFICATE OF SERVICE**

I, Robert F. Corazzini, on behalf of Region IV Educational Service Center, George Mason University Instructional Foundation, Inc., Humanities Instructional TV Educational Center, Inc., Valley Lutheran High School, Indiana Higher Education Telecommunications System, Views on Learning, Inc., Butler Community College, Denver Public Schools and Minnesota Public Radio, certify that a copy of the foregoing **Opposition to Petition for Reconsideration** was mailed via United States First Class Mail, postage prepaid to the following on February 4, 1999:

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Washington, D.C. 20554

Commissioner Harold Furchtgott-Roth  
Federal Communications Commission  
1919 M Street, N.W.  
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Commissioner Gloria Tristani  
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Commissioner Michael K. Powell  
Federal Communications Commission  
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